



MINORITY AND JUSTICE COMMISSION

UW SCHOOL OF LAW

FRIDAY, AUGUST 9, 2013 (8:45 A.M. - NOON)

JUSTICE CHARLES W. JOHNSON, CO-CHAIR

JUDGE MARY YU, CO-CHAIR

AGENDA	PAGE
CALL TO ORDER	
Introductions and Approval of June 14, 2013, Minutes	
COMMISSION BUSINESS	
Chairs Report (reentry conference, meeting on September 27)	Justice Charles Johnson and Judge Mary Yu
PRESENTATION	
Website Presentation and Discussion	Commissioner McCown & Rosa Melendez
COMMITTEE REPORTS	
Racial Impact Statements	Ms. Carla Lee & Bonnie Glenn
Collaborations Committee	Judge Vickie Churchill, Jeff Beaver, Jennifer Sheffield
Juvenile Justice Committee	Ms. Anne Lee
Civil Legal Aid Study	Mr. David Keenan
Youth and Justice Forum	Judge LeRoy McCullough
NOVEMBER MEETING	
Planning for Tri-Cities Visit	Justice Johnson, Judge Yu, Judge Yule, and Ms. Cynthia Delostrinos
ARTICLES	
Next Meeting: Joint Meeting with the Sentencing Guidelines Commission Seattle City Hall September 27, 2013	
ADJOURNMENT	



Washington State Minority and Justice Commission (WSMJC)
Friday, June 14, 2013, (8:45 a.m. – 12:00 p.m.)
Perkins Coie, Seattle, Washington



MEETING NOTES

Commission Members Present

Justice Charles W. Johnson, Co-Chair
Judge Mary I. Yu, Co-Chair
Ann E. Benson
Robert C. Boruchowitz
Judge Vickie I. Churchill
Jennifer Davis-Sheffield
Callie Dietz (via phone)
Judge Deborah D. Fleck
Bonnie J. Glenn (via phone)
Uriel Iñiguez
Yemi Jackson
Carla C. Lee
Sandra E. Madrid, Ph.D.
Commissioner Joyce J. McCown
Rosa Melendez
Karen W. Murray (via phone)
P. Diane Schneider
Jeffrey C. Sullivan
Judge Mariane C. Spearman
Travis Stearns
Justice Debra Stephens (via phone)
Jeffrey Sullivan
Judge Vicki J. Toyohara
Judge Dennis D. Yule

Members Not Present

Judge Alicea-Galvan
Jeffrey A. Beaver
Russell Hauge
Judge LeRoy McCullough
Judge Gregory D. Sypolt

AOC Staff Present

Myra Downing
Pam Dittman
Cynthia Delostrinos
Kathy Bradley

Other Guests

Anne Lee
Janera Castillo (sp?)

The meeting was called to order at approximately 8:45 a.m. The meeting notes from the April 5, 2013, Minority and Justice Commission meeting were approved.

CHAIR REPORTS

Staffing Update

Please welcome Cynthia Delostrinos. Cynthia is joining the Administrative Office of the Courts (AOC) Diversity Team as the Court Program Analyst staff person for the Minority and Justice Commission. Cynthia will begin on Monday, August 5.

SCJA Session

The Minority and Justice Commission (MJC) and the Washington State Center for Court Research (WSCCR) were asked to develop a session for the SCJA Spring Conference. Dr. Sarah Veele presented on the Juvenile Disproportionate Minority Contact Report.

Sentencing Guidelines Commission Meeting

Save the Date: Friday, September 27, 2013. The MJC and the Sentencing Guidelines Commission are holding a joint meeting on Friday, September 27, from 9 a.m. – 12 noon at Seattle City Hall, Landes Room. Dr. Katherine Beckett, University of Washington, will share her research on how prior drug convictions affect the length of sentences.

Bonnie Glenn is representing the MJC on the Sentencing Guidelines Commission's Sub-Committee addressing racial impact statements. Carla Lee provided a sample draft of a *Racial/Corrections Impact Review Note*. Ms. Lee modeled this draft after 15 states, taking into account mass incarceration, racial, ethnic, and socio-economic pieces along with a provision including information on schools and motor vehicle legislation. These impact statements are a policy tool to try and assess the unintended consequences of where legislation may impact the criminal justice system. Marc Mauer of the Sentencing Project (www.sentencingproject.org) has indicated that he is willing to advise the MJC, at no cost, with this project.

Immigration Benchguide

In partnership with the Gender and Justice Commission, the Immigration Benchguide has been completed and will be printed and published by the end of July. The project was supported by a State Justice Institute grant.

Resignations

Dr. Sandra Madrid is retiring from the UW and has resigned her position on the Commission. However, after discussion, Dr. Madrid has agreed to be a Member Emeritus and will stay involved when and where she is able.

If you are interested in filling Dr. Madrid's liaison position on the Civil Legal Aid Needs Study Update Committee, please e-mail Judge Yu. (Note: David Keenan was appointed to serve as the MJC's liaison. An email with Mr. Keenan's letter of introduction and appointment to this Committee was sent to the Commission listserv on June 21, 2013.)

Miscellaneous

- **Justice in Washington Report**

The MJC commissioned a study through WSCCR to look at the perceptions of justice. The report is a measurement of how people perceive the courts, not necessarily a measurement of how judicial officers do their jobs. Phase II is on hold for at least a year while funding and staffing is established. It has been suggested that this could be the topic of discussion at the proposed November 2, 2013, extended MJC/Community meeting to be held in the Tri-Cities. This will be a main project for the new hire, Cynthia Delostrinos, to assist with a plan of action and how best to introduce the information to the community. The AOC Diversity Team Staff will be scheduling a conference call with Dr. McCurley, Judge Yu, and Commission members who might be interested in participating.

- **Initiative for Diversity Governing Council (IDGC)**

Judge Mariane Spearman is the MJC liaison for this group. IDGC sponsored a Managing Partner's Summit in May which was well attended. A panel of speakers discussed ways to attract and retain a diverse workforce. One main goal of the Summit was to have attendees agree to promote and implement procedures where employees feel welcome and are able to advance in the agency/firm.

Judge Spearman asked the Commission to entertain the motion to assist with covering some of the Summit costs such as postage or printing. The Commission approved Judge Spearman's request to pay for up to \$1,000 toward costs.

- **Workshop on Achieving Racial Equity in School Discipline.**
Karen Murray attended a workshop on June 1, on behalf of the Commission. The workshop discussed the use of discipline in schools and how it is a gateway for youth entering the justice system. There will be on-going discussions which Ms. Murray will continue to participate. She will keep the Commission posted. Additionally, she would like to know if there are specific ways or ideas that she should be bringing forward on behalf of the MJC. If so, please feel free to e-mail or call her at Karen-aca.murray@kingcounty.gov or 206-624-8105, ext. 247.
- **MJC Community Meeting**
Canceled: October 11, 2013, MJC Meeting
Scheduled: Saturday, November 2, 2013, MJC Meeting in the Tri-Cities
 - The MJC discussed various ideas on holding a meeting in Eastern Washington that would also include a community meeting.
 - The MJC decided to host a meeting on Saturday, November 2, 2013, in the Tri-Cities. This date piggybacks the Tri-Cities Youth and Justice Forum that will be held the Friday, November 1, 2013.
 - Commission staff will need assistance from members to plan the meeting and the community portion. Please contact Judge Yu if you are interested.

STAFF REPORT

Budget Review

Myra Downing provided a brief budget overview for members. The new biennium begins July 1, 2013.

Tribal State Court Consortium

The planning team is currently working on a pilot project with the Tulalip Tribe and Snohomish County. The purpose of this project is to work with tribal nations and state courts to identify and propose solutions to inter-jurisdictional issues in the management and disposition of domestic violence and sexual assault cases, Indian Child Welfare cases, and to address juvenile disproportionality.

Law School Admission Council (LSAC) Grant

The MJC and the GJC cosponsored a grant submittal for a project that would address School Pipeline projects within Washington State. Awards will be announced in the fall.

COMMITTEE REPORTS

Collaborations Committee, Judge Vickie Churchill, Chair

- Jennifer Davis-Sheffield drafted a letter which has been finalized and will be sent to a group of key collaborators. Ms. Davis-Sheffield will be following up with each of the identified parties to identify ways to collaborate or work together.
- Jeff Beaver and Russ Hauge met with a representative from the Washington Association of Sheriffs and Police Chiefs where an open and frank discussion about disproportionality, perception, reality, and what data shows in regard to DMC and the school to prison pipeline. Additional discussion is needed along with identifying who else should participate (the Defenders' Association) and how to identify best ways to inform others about this work.
- Commissioner Joyce McCown and Judge Dennis Yule indicated work is continuing on the redesign of the MJC website. Members have been asked to submit an updated bio and photo to AOC Diversity Team staff, Paula Odegaard at paula.odegaard@courts.wa.gov no later than July 17, for inclusion on the website. Justice Johnson and Judge Yu have also drafted a *welcome letter* for use on the website. The Commission members recommended to members to suspend the MJC Newsletter for the next year while we redesign the website and explore other ways of outreach such as Facebook .

The final recommendation made was to continue to solicit artwork each year. Members will be included in the solicitation so they can then send to their various *contacts*.

Tri-Cities Youth and Justice Forum

The 11th Annual Tri-Cities Youth and Justice Forum has been scheduled for Friday, November 1, at Columbia Basin College. The Committee is fine tuning the schedule and program content. It is expected that 200 students will be attending. Outcome measures are being developed to assess any impact the Forum has on students and whether it influenced their desire to work in the criminal justice system.

Commissioner Joyce McCown relayed that a regional youth forum in spring 2013, will be held in the Spokane area. Gonzaga School of Law, the County Bar Association, and others have agreed to cosponsor the event. More information will be forthcoming.

Juvenile Justice Committee

A letter was sent to those who participated in a stakeholders meeting in December 2012. The letter is asking for follow-up on items discussed during the meeting and to coordinate efforts to report back to the Supreme Court.

Tim Jaasko-Fisher has been contracted with to develop and conduct facilitated discussions on DMC. Dr. Sarah Veele will be joining Mr. Jaasko-Fisher. The concept is to provide the opening to dig deeper into the data released and obtain ideas from the jurisdictions on how to address the disparities identified in the data.

Save the Date: July 9, CLE on Prosecutorial Discretion on Juvenile Court and Beyond. The MJC cosponsored this CLE and provided funds to pay for faculty.

New Business

Please remember that the Commission has note cards and posters for use by members and to pass out at community events. Please feel free to contact AOC Diversity Team staff to request supplies.

Next Commission Meeting

The next meeting is scheduled for Friday, August 9, 2013, at the University of Washington Law School.

DRAFT

PERSONAL SERVICES CONTRACT PSC13562 – Final Report

July 9, 2013

**Tim Jaasko-Fisher
3514 N. 24th
Tacoma, WA 98406
253.227.88078**

Introduction

The purpose of this contract was to generate discussions relating to disproportionate minority contact (DMC) data that has been collected and disseminated to the juvenile courts and to assess the potential of engage communities in moving forward to address the data using a format that would combine a process designed to solicit input from a wide variety of stakeholders and ultimately result in one or two “micro-experiments” that could be advanced on a local level. Initial conversations were held in Kitsap and Snohomish Counties in June 2013.

Initial concept

As part of this consultation, a design was created to engage communities with DMC data in a meaningful way that would allow them to move forward with the design and implementation of “micro-experiments” to positively influence DMC data on the county level. That initial proposal consisted of a five step process as follows:

Step 1: Selecting counties

With a small ad hoc group of the juvenile justice sub-committee, counties would be selected to participate based on DMC data and perceived readiness of the county to form a learning community. Three to six core participants would be identified in each county who are willing and able to assist in co-designing and participating in the local learning communities for the duration of the project.

Step 2: Eco-mapping the issue on a local level

The core group of each county would participate in a facilitated process to create an eco-map of the DMC issue in their community. An eco-map is a visual representation of the people involved in an issue and it will help us to identify who is necessary to have as part of the learning community in order to sustain change efforts. Fundamentally, the eco-map seeks to identify a core group of participants as well as those who are viewed as critical to any solution moving forward and explores the connections between these individuals. Among other things, the eco-map will help identify who should be involved in co-designing the county learning community.

Step 3: Learning community formation

Key people identified in the eco-mapping process would participate in a structured process to design a 1-2 day facilitated event to form the learning community. The event would allow for the dissemination of relevant DMC data, explore efforts already underway to address DMC, and look for a local path forward on the issue. This facilitated conversation might involve tools such as appreciative inquiry, world café, or other liberating structures (see www.liberatingstructures.com) to promote full engagement. Micro-experiments designed to rapidly prototype possible solutions will be identified and considered for implementation. Methods of measuring the success of these experiments will be identified and a local blueprint for progress would be created.

Step 4: Follow up meetings

Follow up meetings (preferably monthly depending on county needs) would be established to track progress and make adjustments to the micro-experiments designed at the formation

of the learning community. Process facilitation and coaching would be provided initially to assist in building capacity the project groups to be self-regulating.

Step 5: Creating a narrative

Working with each learning community a narrative addressing how the community was formed, barriers encountered, and progress made on both substantive and process issues would be created. This narrative would also include a status report on the various micro-experiments underway.

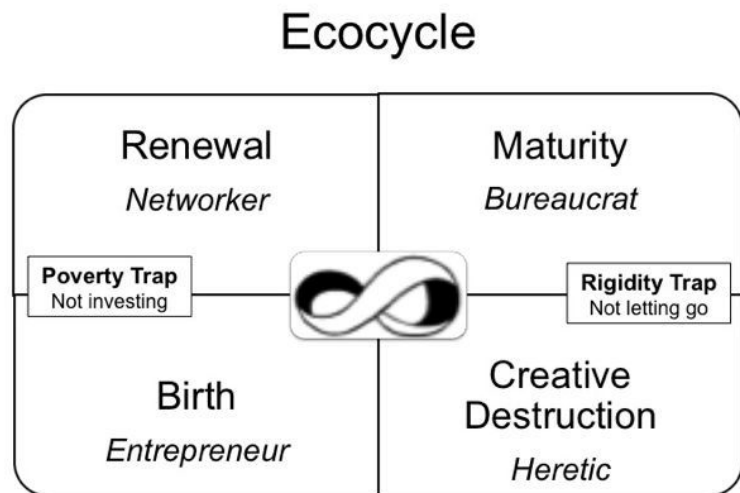
Based on economic and time constraints, the decision was made to host concept development meetings in two counties to seek feedback on the proposed process and to assess the potential for engagement in the process on a more long-term basis.

Concept development meeting design

The initial design for feedback meetings consisted of the following agenda items:

1. Review of DMC data and opportunities for questions and discussion
2. Sharing of efforts currently underway to address DMC on the county level
3. Introduction and use of the project “eco-cycle”
4. Eco-mapping of potential participants
5. Storyboard large group meeting (time permitting)

Review of DMC data was to be conducted by Dr. Sarah Veele and would centered around materials previously distributed by the Administrative Office of the Courts. Once the data was shared, participants would be given an opportunity to discuss efforts currently underway in their county in an open discussion format. A simplified version of the project “eco-cycle” would then be introduced to participants, specifically noting that all projects progress through stages of birth, maturity, creative destruction, and renewal.¹ Participants would be given two minutes to think of the projects underway in their community to address DMC. Participants would then be asked to pair up and compare their list of DMC interventions for five minutes and add any additional projects they might discover together. Finally, groups of four would be formed and project names would be written on index cards and, based on consensus of the group of four, placed in one of the four quadrants on the eco-cycle as a means of mapping current DMC efforts.



¹ See McCandless and Limpowicz, at www.liberatingstructures.com.

Once current efforts were “mapped”, participants would be asked to consider whether a day long facilitated event might be beneficial to either advancing a project already underway, or as a means of starting a project to fill a gap in DMC efforts. Once a project area was identified, participants would be asked to participate in an “eco-mapping” process. Eco-mapping involves identifying and recording groups of people in four concentric circles around a problem or issue. The first circle encompasses 4-6 people who are known by the group creating the map to all ready be fully engaged in the issue. The prompting question here might be something like “who could you call right now that would meaningfully engage you in a conversation to address your issue”. The second circle encompasses those who are either viewed as an essential part of the problem or solution, and finally, the third ring consists of the “dream team” (i.e. if you could engage anyone in the world on this issue, who would it be?). Time permitting, participants would be engaged in the process of beginning to design the day-long event.

Meetings

As mentioned previously, meetings were held in Kitsap and Snohomish Counties. In Kitsap County, the meeting was held with the presiding judge, the juvenile court administrator, and detention manager. Due to the small number of people in attendance, a less formal structure than that which we had planned was adopted. Specifically, data was shared with the attendees by Dr. Veele, the attendees shared what Kitsap County is doing to address juvenile DMC, and then a general conversation ensued regarding what other efforts may be undertaken.

The meeting in Snohomish County consisted of a much larger group of individuals, including a judge assigned to juvenile court, the juvenile court administrator, staff, representatives from detention, and other community stakeholders. The general plan for the meeting was followed, though we did not reach the stage of planning for a specific program, but rather discussed a rough prototype for what such a program might look like.

Observations and ideas

A number of ideas and issues arose in the course of the conversations that occurred in these two counties which may inform future efforts related to juvenile DMC. Some of these observations were made in both meetings, and others were unique to just one of the two counties. All of these observations are limited by the fact that we only conducted meetings in two jurisdictions and caution should be taken in any attempt to generalize the results.

Role of the judiciary

Some participants raised the issue of the proper role of the judiciary in addressing DMC. While all participants seemed comfortable with the idea that courts and detention should work to address DMC, some seemed uncomfortable with the idea that they might extend their influence beyond what they have direct authority over. For example, when it was suggested that the court might act as a convener to invite other players in the system to a conversation about how best to address DMC, concerns were expressed about the use of “political capital” and whether the court would be seen as unreasonably encroaching on the functioning of other branches. This was clearly not the opinion of everyone in attendance

and was perhaps even a minority opinion. However, it does not seem unreasonable to suspect that this foundational issue may need to be addressed in some jurisdictions.

Invitation to participate

In conjunction with questions relating to the role of the judiciary came suggestions relating to how and to whom an invitation to participate was extended. One group indicated that they would favor an approach in which an invitation to participate was made directly to authority figures in all three branches of government to avoid an appearance of overreaching by any one entity. This seemed to be a concern in one jurisdiction, but not in the other which had the benefit of a more formal multi-disciplinary structure in place to address juvenile DMC. Given the exploratory nature of these meetings, the invitation to participate was somewhat general. Participants suggested that they would like a more detailed invitation and expressed a willingness to come ready to participate more fully with a more detailed agenda.

Familiarity with data

Participants in both jurisdictions seemed fully aware of the data related to DMC. They had few questions and those that they did have seemed relatively sophisticated indicating fluency with the data related to the issue. In both counties, participants came to the meeting with their own data in addition to that which was being provided at the meeting.

Ongoing efforts

In both counties, participants came to the table with evidence of ongoing efforts to address juvenile DMC. The group of attendees in Snohomish County were all part of a standing committee working to address the issue and many were also part of the JDAI. They had implemented several strategies and were readily able to identify a number of efforts at various stages of the project life-cycle. The group had clearly thought through many of the issues, presented evidence of their work to date, and appeared committed to following through with long-term plans. Though Kitsap County does not have the benefit of being a JDAI site, they have adopted some JDAI tools and worked to develop and implement their own strategies as well. Specifically, Kitsap has adopted a diversion protocol, detention screening tool, and standard range and case management tools for probation violations.

Overall impression

Overall, it appears that both counties are engaged in reducing juvenile DMC. The type of work initially proposed by this project seems to have a place in the overall effort in that it would provide an opportunity to step outside the confines of a more formal approach to the issue and instead allow for more locally developed, individualized solutions. The two approaches should not be viewed as competing, but rather as complimentary. One foundational issue which must be addressed in any jurisdiction is the scope of the court's involvement. Whereas some courts view their role as limited to that which they have direct authority to control, others are willing to use their influence much more expansively to advance the effort.

Recommendations for further work

It appears there would be a willingness by at least some courts to participate in the initial process outlined above to seek novel ways of addressing DMC in a localized fashion. For example, one idea that was discussed in the Snohomish County meeting was to use this process to pull together community members and stakeholders to address DMC in a specific zip code. The open, generative nature of the meetings proposed would likely lead to unique, community tailored approaches to DMC. Although it would likely be easier to work with a court willing to extend its influence beyond its formal authority, careful crafting of the invitation and early involvement of other key stakeholders in the planning process could allow the process to work in other courts as well. Overall, it would seem a worthwhile investment to move forward with this process in one or two counties to further refine the concept and move toward more concrete proposals tailored to individual counties. The fundamental idea of bringing people together in this way to address DMC seems sound and likely to be welcomed in many jurisdictions.

Racial and Ethnic Impact Statements by State

State	Year Established	In Statute?	Who Completes the REIS?	What Areas Are Eligible for REIS?	Is REIS Required?	Other
Minnesota	2006	No – MSGC offered to provide	Minnesota Sentencing Guidelines Commission	Crime bills	No – there is no statutory requirement for REIS.	REIS are provided when MSGC staff identifies a disparate racial impact in the course of preparing fiscal impact. The REIS are created separately from the fiscal impact statement.
Iowa	2007 House File 2393	Yes	Legislative Services Bureau	1. Crime Bills 2. Applicants for grants from state agencies must provide a REIS.	Yes – HF 2393 became law in FY2009	
Connecticut	2009	Yes House Bill 6581	Office of Legislative Research and the Office of Fiscal Analysis	Bills that increase or decrease the pretrial or sentences population of state correctional facilities	Yes – but prepared only upon request of legislative committee	Since its inception, there has only been 1 bill for which a REIS has been requested. Major limitation is the quality of criminal justice data available.
Oregon	2013	Yes Senate Bill 463	Oregon Criminal Justice Commission	1. Criminal offender population 2. Recipients of human services 3. Applications for grants awarded by state agencies	Yes	
Texas	2009	No – House Bill 930 did not pass	Legislative Budget Board	Crime bills	Yes – had it passed	Bill never made it out of committee.

Racial and Ethnic Impact Statements by State

Maryland	2012	No – Senate Bill 679 did not pass	Department of Legislative Services	Crime bills	Yes – had it passed	
Arkansas	2013	No – Senate Bill 1093 did not pass	Office of Economic and Tax Policy	Crime bills	Yes – had it passed	REIS would also be prepared for juvenile crime bills. Bill was recommended for study in the interim.
Illinois	2011	Senate Bill 2271				Racial and Ethnic Impact Research Task Force was created to determine a practical method for standardized collection and analysis of racial and ethnic data of arrestees in order to create a REIS for crime bills.

JUMPING THE GUN: IOWA’S SWIFT ADOPTION OF MINORITY IMPACT STATEMENT LEGISLATION POINTS TO OTHER PROBLEMS WITHIN THE STATE’S CRIMINAL JUSTICE SYSTEM

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“Injustice anywhere is a threat to justice everywhere.”

—Dr. Martin Luther King, Jr.¹

I. INTRODUCTION

There may be something horribly wrong in the State of Iowa. According to a provocative report issued in July 2007 by the Sentencing

1. MARTIN LUTHER KING, JR., *Letter from Birmingham Jail* (Apr. 16, 1963), in *WHY WE CAN’T WAIT* 79 (1964).

Project (Sentencing Project Report), a national nonprofit advocacy group focused on criminal justice policy issues, Iowa incarcerates African-Americans, compared to Caucasians, at a ratio of 13.6 to 1.² The national average, according to that same report, is 5.6 to 1.³ This places Iowa in the top spot for the highest ratio of black-to-white incarcerations of any state in the nation.⁴

This is not the type of statistic that you will find displayed prominently on the official Iowa government website.⁵ In fact, the statistics included on the site only make Iowa's 13.6-to-1 ratio that much more disturbing. According to United States Census Bureau statistics—linked from the Iowa website—as of 2008, Iowa's percentage of African-Americans in the overall population is a meager 2.7%.⁶ As pointed out by Iowa Governor Chet Culver, however, “while 2% of Iowa's population is African-American, 24% of Iowa's prison population is African-American.”⁷ It is hard to imagine that the Governor was excited to discuss such information with the press.

Legislators took notice of the Sentencing Project Report's statistics, and Iowa State Representative Wayne Ford (D-Des Moines) acted. Ford introduced House File 2393,⁸ which requires the preparation of a minority⁹

2. MARC MAUER & RYAN S. KING, *UNEVEN JUSTICE: STATE RATES OF INCARCERATION BY RACE AND ETHNICITY 10* (2007). Based on 2005 data from the Bureau of Justice Statistics, African-Americans in Iowa were incarcerated at a rate of 4,200 per 100,000 population, whereas Caucasians were incarcerated at a rate of 309 per 100,000. *Id.* at 9. Hispanics were incarcerated at a rate of 764 per 100,000. *Id.* at 13.

3. *Id.* at 10.

4. *See id.*

5. Iowa Government Online, <http://www.iowa.gov/> (last visited Mar. 12, 2010).

6. U.S. Census Bureau, State & County Quick Facts, <http://quickfacts.census.gov/qfd/states/19000.html> (last updated Feb. 23, 2010) (census breakdown report of Iowa).

7. Press Release, Office of the Governor & Lieutenant Governor, Governor Culver Signs Minority Impact Statement Bill into Law (Apr. 17, 2008), *available at* http://www.governor.iowa.gov/news/2008/04/17_2.php.

8. Press Release, Official Website of Representative Wayne Ford, Governor Will Sign Minority Impact Statement into Law Today (Apr. 17, 2008), *available at* http://www.repwayneford.com/media/apr_17_2008.html.

9. It is important to note that although Iowa defines “minority persons” as “women, persons with a disability, Blacks, Latinos, Asians or Pacific Islanders, American Indians, and Alaskan Native Americans,” this Note will focus on the disparate treatment of African-Americans in Iowa's criminal justice system. *See* IOWA

impact statement detailing the predicted impact that any new correctional legislation might have on Iowa's minority populations.¹⁰ Governor Culver signed the bill into law on April 17, 2008, and he commented that it would allow members of both the state general assembly and executive branch to consider the potential positive and negative effects that new correctional legislation might have "on Iowa's minority communities."¹¹ Representative Ford, who noted that the new law would help the state "determine if proposed legislation is unfairly targeting certain segments of Iowa's population," shared the Governor's sentiment.¹² He went on to say that the State needs to be tough on crime, but that it is still important that Iowa's laws remain "fair and equitable."¹³ Marc Mauer, one of the authors of the Sentencing Project Report, stated that "Iowa's aggressive attempt to address racial and ethnic disparity can jumpstart a movement for fairness around the nation."¹⁴

But what has Iowa's minority impact statement legislation really accomplished, and what is it capable of accomplishing? It seems to be a logical first step in the correction of racial disparity in any criminal justice system, if such disparity actually exists, but is it possible for this type of legislation to jumpstart a national trend that will drastically alter the probability that one out of every three African-American men born today will spend some part of his life in prison?¹⁵ Is such legislation capable of giving fathers back to some of the 720,000 African-American children nationwide whose lives have already been directly affected by such apparent racial disparity?¹⁶

CODE § 8.11(2)(b) (2009) (providing definition of "minority persons" with respect to minority impact statements in the state grant application process).

10. *Id.* § 2.56.

11. Press Release, Office of Governor & Lieutenant Governor, *supra* note 7.

12. Posting of Dean Fiihr to Iowa House Democrats, <http://iowahouse.org/2008/03/25/minority-impact-statement-law-passes-house/> (Mar. 25, 2008) (quoting Representative Wayne Ford).

13. *Id.* (quoting Representative Wayne Ford).

14. *Governor Culver Signs Nation's First Racial Impact Sentencing Bill*, US STATE NEWS, Apr. 22, 2008, 2008 WLNR 10805010 (reprinting news release of Iowa State Public Defender).

15. See THOMAS P. BONCZAR, U.S. DEP'T OF JUSTICE, PREVALENCE OF IMPRISONMENT IN THE U.S. POPULATION, 1974-2001, at 8 (2003), <http://bjs.ojp.usdoj.gov/content/pub/pdf/piusp01.pdf>.

16. See LAUREN E. GLAZE & LAURA M. MARUSCHAK, U.S. DEP'T OF JUSTICE, PARENTS IN PRISON AND THEIR MINOR CHILDREN 2 (2008), <http://bjs.ojp.usdoj.gov/content/pub/pdf/pptmc.pdf> (revised Jan. 8, 2009). An estimated 1,559,200 children had a father in prison at midyear 2007; nearly half (46%) were children of

This Note will examine Iowa's new minority impact statement legislation. Part II will begin with a discussion of what minority impact statements are, which will include a detailed examination of a statement's preparation and implementation, along with further discussion of the statistical analysis that compelled the Sentencing Project to issue its report. Part III will examine Iowa's version of the minority impact statement, taking into consideration what Representative Ford hopes to accomplish and evaluating Iowa's ability to correctly formulate and implement such a statement. Part IV will discuss potential problems with the Sentencing Project's report, focusing specifically on counterarguments made by Professor John McAdams in his paper, *Does Wisconsin Lock Up Too Many Blacks?*¹⁷ Part V will examine Iowa's minority impact statement legislation in light of McAdams's paper and will consider alternative legislative and judicial remedies capable of decreasing racial disparity in Iowa's criminal justice system.

II. MINORITY IMPACT STATEMENTS: WHAT THEY ARE AND WHY THEY APPEAR NECESSARY

A. *The Existence of Racial Disparity in the American Criminal Justice System*

The Iowa Legislature and Governor Culver are to be commended. It is one thing to recognize a problem, but an entirely different thing to act in order to correct it. The nearly unanimous, bipartisan support that Iowa's minority impact statement legislation garnered stands as a testament to what lawmakers perceived as both obvious and severe—racial disparity in Iowa's criminal justice system.¹⁸ Iowa is not alone in its disparate treatment of minorities. As discussed in the Sentencing Project Report, with the 500% rise in prison and jail populations since the early 1970s (a disturbing statistic in its own right), 2.2 million people are currently incarcerated in the United States.¹⁹ An astounding 900,000 of those currently incarcerated are African-American.²⁰ Further, this information is

black fathers. *Id.* It is also important to note that these are rhetorical questions that will not be discussed within this Note.

17. John McAdams, *Does Wisconsin Lock Up Too Many Blacks?*, WIS. INT., Fall 2007, at 1.

18. See Press Release, Office of Governor & Lieutenant Governor, *supra* note 7. House File 2393 "passed the Iowa House of Representatives unanimously and passed the Senate overwhelmingly by a vote of 47-2." *Id.*

19. MAUER & KING, *supra* note 2, at 1.

20. *Id.*; see also BONCZAR, *supra* note 15, at 1 (indicating that as of 2001,

essentially common knowledge. As one author put it, “[w]hat is surprising is not that these things are true, but that they are well known, have long been well known, and have changed little in recent decades.”²¹ So the question remains, why is it that African-Americans, who comprise approximately 13% of the United States population,²² make up 40% of the nation’s prison and jail populations?²³ This is currently, and most likely will remain, a subject of dispute.²⁴

Numerous explanations have been proffered. They range from the patently obvious (that “drug and sentencing policies that contribute to disparities have not been significantly changed in decades”), to the more bold (“that the white majority does not empathize with poor black people who wind up in prison”), to the scary and seemingly improbable (that “recent punishment policies” are a “mechanism for maintaining white dominance over blacks in the United States”).²⁵ However, it is probably correct to assume that disparities in criminal justice systems are the result of numerous and interrelated socioeconomic, psychological, and cultural factors that vary from state to state. However, as the Sentencing Project Report suggests, policy decisions produce racially disparate results in criminal justice systems.²⁶ Such policy decisions include the increased policing of communities of color “at the expense of drug treatment and diversion programs,”²⁷ mandatory sentencing guidelines,²⁸ the unfortunate

2,166,000 African-Americans had served time in prison at some point in their lives).

21. Michael Tonry & Matthew Melewski, *The Malign Effects of Drug and Crime Control Policies on Black Americans*, 37 CRIME & JUST. 1, 2 (2008).

22. See U.S. CENSUS BUREAU, ANNUAL ESTIMATES OF THE RESIDENT POPULATION BY SEX, RACE, AND HISPANIC ORIGIN FOR THE UNITED STATES: APRIL 1, 2000 TO JULY 1, 2008, (May, 2009), <http://www.census.gov/popest/national/asrh/NC-EST2008/NC-EST2008-03.xls>.

23. PAIGE M. HARRISON & ALLEN J. BECK, BUREAU OF JUSTICE STATISTICS BULLETIN: PRISONERS IN 2005 8 (2006), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/p05.pdf> (revised Jan. 18, 2007).

24. See, e.g., TODD R. CLEAR ET AL., AMERICAN CORRECTIONS 478–93 (8th ed. 2009) (highlighting issues raised by a high African-American incarceration rate).

25. Tonry & Melewski, *supra* note 21, at 1.

26. MAUER & KING, *supra* note 2, at 16.

27. *Id.* at 16–19; see also Dana Boone, *Blacks in Iowa Prisons: Disproportionate Numbers, but Possible Solutions Questionable*, IOWA INDEP., Oct. 4, 2007, <http://iowaindependent.com/1221/blacks-in-iowa-prisons-disproportionate-numbers-but-possible-solutions-questionable> (discussing Iowa’s willingness to spend \$4.3 million on early childhood education compared to \$1.25 million for community-based correctional programs).

28. MAUER & KING, *supra* note 2, at 17.

side effects of certain “race neutral” policies,²⁹ and resource allocation, which causes minorities to rely more heavily on “an overburdened public defense system.”³⁰ Whatever the reason, there is little room to doubt that racial disparity—intended or not—exists to some extent in the various criminal justice systems of the United States. According to the Sentencing Project Report, it is abundantly present in Iowa.³¹ The question, then, is how do we fix it?

B. *The Invention of Minority Impact Statements*

Many policies have a strange way of producing racially disparate outcomes in criminal justice systems.³² Such disparities could be preempted by the implementation of “racial impact statements,” which could be used to document, predict, and potentially alleviate the negative consequences new correctional policies might have on minorities.³³ These racial impact statements would be “[s]imilar to fiscal or environmental impact statements,” and “would enable legislators and the public to anticipate any unwarranted racial disparities and to consider alternative policies that could accomplish the goals of the [proposed] legislation without causing undue racial effects.”³⁴

On its face, the use of racial impact statements seems like a no-brainer, but the idea is not without problems. As conceived, racial impact statements could be applied to “[s]entencing statutory changes, [s]entencing guidelines adjustments, [l]egislation creating new substantive

29. *E.g., id.* (“[S]chool zone drug laws produce severe racial effects due to housing patterns, whereby drug offenses committed near the urban areas that contain many communities of color are prosecuted more harshly than similar offenses in rural communities populated largely by whites.”). Iowa currently has a drug-free school zone law. *See* IOWA CODE § 124.401A (2009).

30. MAUER & KING, *supra* note 2, at 18.

31. *Id.* at 3 (“States with the highest black-to-white ratio are disproportionately located in the Northeast and Midwest, including the leading states of Iowa, Vermont, New Jersey, Connecticut, and Wisconsin.”).

32. *Id.* at 16–19; *see also* Marc Mauer, *Racial Impact Statements as a Means of Reducing Unwarranted Sentencing Disparities*, 5 OHIO ST. J. CRIM. L. 19, 21 (2007) (“In the twenty years since enactment of the law, more than 80% of crack cocaine sentences have been imposed on African Americans.”).

33. Mauer, *supra* note 32, at 19.

34. *Id.* at 32 (noting that “fiscal cost estimates are prepared by the Congressional Budget Office for every bill reported by committee” and that “federal agencies are required to prepare an environmental impact statement for ‘proposals for legislation and other major Federal actions significantly affecting the quality of the human environment’” (citing 42 U.S.C. § 4332(c) (2007))).

crimes, ‘[t]ruth in sentencing’ policies, [p]arole release policies, [p]arole revocation policies, and ‘[e]arly’ release policies, such as participation in drug treatment or other programming.”³⁵ While the preparation of racial impact statements would vary by jurisdiction, in all states mechanisms exist that would allow for their implementation, including sentencing commissions, departments of correction, and budget and fiscal agencies.³⁶ Whichever mechanism is chosen, a host of technical issues will arise. These issues include limited data, which could result when sentencing changes are made (e.g., a misdemeanor is changed to a felony, thus necessitating assumption regarding pending case outcomes), and a lack of availability of racial or ethnic data, which points at the broader problem of inadequate race categorization in sentencing and incarceration (e.g., sometimes Latinos are categorized as “other”).³⁷ Other issues include the “[q]uantity of [i]mpact [s]tatements to be [p]roduced” (e.g., whether state resources are such that impact statements can be prepared for all new correctional legislation) and “[r]acial [i]mpact as a [r]esult of [m]ultiple [d]ecision-[m]aking [p]oints” (e.g., evaluating not just the legislation, but other factors as well, such as law enforcement policies).³⁸ Finally, courtroom dynamics (e.g., “courtroom personnel [sometimes] engage in decision-making designed to avoid imposing the mandatory sentences”) and limitations on projections (e.g., a state lacks the technical ability to make sophisticated future statistical projections regarding the impact of pending legislation) present problems as well.³⁹

Although the preparation of racial impact statements appears rife with problems, the implementation of such statements is fairly straightforward. After a legislative committee makes a determination that new correctional legislation may⁴⁰ have an impact on a minority population, an impact statement will be prepared by one of the agencies or commissions previously mentioned. After an impact statement is prepared, and before the proposed legislation is voted on, the impact statement is

35. *Id.* at 34.

36. *Id.* at 35–36.

37. *Id.* at 38–39.

38. *Id.* at 39–40.

39. *Id.* at 40.

40. “May” appears to be all that is necessary in making determinations about the appropriateness of the preparation of a minority impact statement. This seems intuitive. If a legislator thinks new legislation “may” have an impact on a minority population, then the preparation of an impact statement is necessary. *See id.* at 36.

sent to the legislative body for review.⁴¹ “Committee consideration of . . . [the racial impact statement] should be guided by two questions. First, do the crime control benefits of such a policy outweigh the consequences of heightened racial disparity?”⁴² That is, would an increase in racial disparity resulting from passage of the proposed legislation seem justified if looked at from a public safety viewpoint? “[S]econd, are there alternative policy choices that could address the problem at hand without such negative [racially disparate] effects?”⁴³ By answering these two questions, legislatures would “direct sentencing policy more specifically toward the area of concern and would almost inevitably reduce the racial disparities.”⁴⁴

This idea is elegant in its simplicity. By encouraging an open dialogue that addresses the potential disparate impact new legislation might have on a jurisdiction’s minority populations, legislators will tailor bills in a more thoughtful manner. This in itself will go a long way toward correcting future racial disparity in criminal justice systems, while taking into account public safety considerations. This goal seems attainable, encouraging “an early discussion of the dynamics of race and justice, rather than waiting until after the legislation has been put into effect.”⁴⁵

III. IOWA’S MINORITY IMPACT STATEMENT

A. *The Law Itself*

On April 17, 2007, Governor Culver signed into law the nation’s first minority impact statement legislation.⁴⁶ Supplemental language was added to Iowa Code section 2.56, which deals with correctional impact statements. The law reads:

1. Prior to debate on the floor of a chamber of the general assembly, a correctional impact statement shall be attached to any bill, joint resolution, or amendment which proposes a change in the law which creates a public offense, significantly changes an existing public offense

41. *Id.* at 41.

42. *Id.*

43. *Id.*

44. *Id.*

45. Marc Mauer, Editorial, *Racial Fairness Gaining Ground in the Justice System*, BALT. SUN, July 30, 2008, at 17A.

46. Marc Mauer, *Racial Impact Statements: Changing Policies to Address Disparities*, CRIM. J., Winter 2009, at 16, 16; Press Release, Office of the Governor & Lieutenant Governor, *supra* note 7.

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or the penalty for an existing offense, or changes existing sentencing, parole, or probation procedures. The statement shall include information concerning the estimated number of criminal cases per year that the legislation will impact, the fiscal impact of confining persons pursuant to the legislation, the impact of the legislation on minorities, the impact of the legislation upon existing correctional institutions, community-based correctional facilities and services, and jails, the likelihood that the legislation may create a need for additional prison capacity, and other relevant matters. The statement shall be factual and shall, if possible, provide a reasonable estimate of both the immediate effect and the long-range impact upon prison capacity.

2. a. When a committee of the general assembly reports a bill, joint resolution, or amendment to the floor, the committee shall state in the report whether a correctional impact statement is or is not required.

b. The legislative services agency shall review all bills and joint resolutions placed on the calendar of either chamber of the general assembly, as well as amendments filed to bills or joint resolutions on the calendar, to determine whether a correctional impact statement is required.

c. A member of the general assembly may request the preparation of a correctional impact statement by submitting a request to the legislative services agency.

3. The legislative services agency shall cause to be prepared a correctional impact statement within a reasonable time after receiving a request or determining that a proposal is subject to this section. All correctional impact statements approved by the legislative services agency shall be transmitted immediately to either the chief clerk of the house or the secretary of the senate, after notifying the sponsor of the legislation that the statement has been prepared for publication. The chief clerk of the house or the secretary of the senate shall attach the statement to the bill, joint resolution, or amendment affected as soon as it is available.

4. The legislative services agency may request the cooperation of any state department or agency or political subdivision in preparing a correctional impact statement.

5. The legislative services agency, in cooperation with the division of criminal and juvenile justice planning of the department of human

rights, shall develop a protocol for analyzing the impact of the legislation on minorities.

6. A revised correctional impact statement shall be prepared if the correctional impact has been changed by the adoption of an amendment, and may be requested by a member of the general assembly or be prepared upon a determination made by the legislative services agency. However, a request for a revised correctional impact statement shall not delay action on the bill, joint resolution, or amendment unless so ordered by the presiding officer of the chamber.⁴⁷

Because this law was a direct result of the Sentencing Project Report, it is not surprising that the added language in Iowa's law relating to the minority impact statement's creation and implementation is nearly identical to that proposed by Marc Mauer—one of the authors of the report—in a 2007 article.⁴⁸

B. *Iowa's Ability to Implement Minority Impact Statements*

Iowa plans to utilize minority impact statements when new public offenses are created, when penalties for existing public offenses are changed, and when changes are made to sentencing, parole, or probation procedures.⁴⁹ This is noteworthy because the mechanism Iowa employs to prepare its minority impact statements is its Legislative Services Agency.⁵⁰ As previously discussed, most states already have mechanisms in place for the implementation of minority impact statements.⁵¹ Although Iowa currently does not have a sentencing commission (which would be ideal for this purpose), it does have the means to perform the complex data analysis necessary to make minority impact determinations.⁵² Iowa's Department

47. IOWA CODE § 2.56 (2009). Apologies for including the entirety of Iowa's law; however, it is important that the complete language be included because it nicely outlines the proposed preparation and implementation of the impact statements, which reflect Mauer's ideas.

48. See Mauer, *supra* note 32, at 41–43.

49. IOWA CODE § 2.56(1).

50. *Id.* § 2.56(2)(b).

51. Mauer, *supra* note 32, at 34.

52. See Nat'l Ass'n of State Sentencing Comm'ns, Contact List (Feb. 2010), <http://www.ussc.gov/states/nascaddr.pdf>. Mauer notes that sentencing commissions at the state level, much like their federal counterpart, "maintain sophisticated databases of sentencing data, trends, and policy impacts, and generally incorporate relatively complete data on race, gender, and offense demographics." Mauer, *supra* note 32, at

of Human Rights Division of Criminal and Juvenile Justice Planning (DCJJ), as demonstrated by its most recent report, is more than capable of performing such an analysis.⁵³ The report includes sections discussing Iowa's short-term incarceration outlook, along with analysis of long-term projected prison populations.⁵⁴ It also includes an analysis of factors both reducing and influencing prison growth.⁵⁵ The report even discusses opportunities for change, and attempts to forecast the future of Iowa's prisons.⁵⁶ What is more, the DCJJ's 2007 report recognized racial disparity in Iowa's criminal justice system.⁵⁷

As noted by the authors of the DCJJ report, cocaine admissions were increasing in Iowa, which "exacerbate the racial disproportionality of Iowa's prison population."⁵⁸ The report also recognized an increase in African-American incarceration rates generally from 1987 through 1996—though the 2007 rate of 24% was the same as the 1996 rate—and noted that African-Americans are "over-represented in Iowa's prisons."⁵⁹ Thus, the DCJJ report demonstrates Iowa's ability to adequately produce the complex statistical analyses necessary for implementation of minority impact statements.

So it appears that the issue of "limited data" is of little concern in Iowa. Further, based on the DCJJ report it appears that the "availability of racial/ethnic data" issue also presents no problem. As reported by the DCJJ, Iowa's current racial classification categories for prisons are African-American, Caucasian, and Latino or Other.⁶⁰ However, the DCJJ report also notes that "[t]he percentage of Latino, Native American, and Asian inmates has steadily increased in Iowa" since 1987.⁶¹ That the DCJJ is capable of dividing the "Latino/Other" category demonstrates that, although the state's official classification does not distinguish between Latinos, Native Americans, and Asians, the DCJJ has the ability to do so for purposes of conducting a statistical analysis.

35.

53. See, e.g., PAUL STAGEBERG ET AL., IOWA DEP'T OF HUMAN RIGHTS, IOWA PRISON POPULATION FORECAST FY 2007–2017 (2007).

54. *Id.* at 2–4.

55. *Id.* at 5–16.

56. *Id.* at 17–27.

57. See *id.* at 18.

58. *Id.*

59. *Id.* at 22.

60. *Id.*

61. *Id.*

Depending on Iowa's current budget status, the "[q]uantity of [i]mpact [s]tatements to be [p]roduced" may be affected.⁶² Although the implementation of Iowa's minority impact legislation seems straightforward, it will still require funding. Completing complex statistical analysis for dozens of correctional bills every year will be costly. However, given the ability of DCJJ to produce a statistically sophisticated report, it appears that the funding may already be available.⁶³ Financial factors must also be considered in evaluating racial impacts resulting from multiple decision-making points.⁶⁴ If law enforcement policies are suspected of exacerbating the racial disparity in Iowa's criminal justice system, then evaluation of those policies will need to be implemented. This too will cost money. However, in 2002 the DCJJ released a comprehensive examination of Iowa State Patrol traffic stops from October 2000 through March 2002.⁶⁵ This appears to show that Iowa is capable, both financially and technically, of producing comprehensive data analysis regarding law enforcement policies. Finally, courtroom dynamics, if determined to be an issue relevant to Iowa's racially disparate incarceration policies, also need to be evaluated.⁶⁶ All of these factors taken into consideration may present a fiscal problem given Iowa's current budget problems.⁶⁷ For appropriate and adequate implementation of minority impact statements, it is important these factors be addressed in a satisfactory manner.

IV. POTENTIAL PROBLEMS WITH THE SENTENCING PROJECT REPORT

A. Professor McAdams's Article

The Sentencing Project Report is provocative; it apparently shows a somewhat uniform racial disparity throughout the entire nation with regard

62. Mauer, *supra* note 32, at 39.

63. E-mail from Beth Lenstra, Senior Fiscal Analyst, Iowa Legislative Services Agency, to author (Feb. 17, 2009, 14:13 CST) (on file with author) ("There was no estimated cost increase for the [minority impact] legislation, nor was there any change to the LSA budget to enact the legislation.").

64. See Mauer, *supra* note 32, at 38–39.

65. IOWA DEP'T OF PUB. SAFETY, AN EXAMINATION OF IOWA STATE PATROL TRAFFIC STOPS 10/00–3/02, at 5 (2003) (noting that collected "data seem to indicate that African Americans . . . were more likely than were the other groups to have been arrested as a result of the [State Patrol] contact").

66. See Mauer, *supra* note 32, at 40.

67. See CHARLES J. KROGMEIER & RICHARD OSHLO, JR., DEP'T OF MGMT., IOWA FISCAL YEAR 2008 BUDGET REPORT (2007).

to the incarceration of African-Americans.⁶⁸ However, what may be considered equally provocative is an article written by John McAdams, Associate Professor of Political Science at Marquette University, which discusses, in somewhat unapologetic terms, the possibility that African-Americans are overrepresented in American criminal justice systems because African-Americans commit more crimes than other races.⁶⁹ McAdams does not question the statistical data collected by the Sentencing Project Report—in fact, he notes that racial disparity seems to exist if “[o]ne simply divides the rate of incarceration for blacks (usually per 100,000 black population) . . . by the rate of incarceration for whites (measured similarly)”—but goes on to say that “before one gets too upset about the disparity. . . one has to ask whether it is actually out of line. It is if we assume that blacks commit crimes at the same rate as whites. But we all know that’s not true.”⁷⁰ McAdams fails to show why it is not true.⁷¹ However, throughout his article, he raises some interesting and potentially damning points aimed at the Sentencing Project Report, as well as the actions taken by states implicated in that report—especially with regard to his home state of Wisconsin.

Wisconsin, like Iowa, placed in the top five for states with the highest black-to-white rate of incarceration per 100,000 of the population.⁷² According to McAdams, “[t]he first clue about problems with these ratios comes when we look at what states are where in the list. Southern states cluster near the bottom of the rankings. They imprison blacks and whites in much more equal ratios than does Wisconsin, or states like Minnesota, Iowa or Connecticut.”⁷³ Obviously, McAdams is insinuating that southern

68. See MAUER & KING, *supra* note 2, at 1, 11.

69. McAdams, *supra* note 17, at 1.

70. *Id.* at 1, 2.

71. McAdams’s article discusses urban racial composition with regard to racial disparity in the criminal justice system, specifically focusing on Wisconsin. *See id.* at 1. Although he says that African-Americans commit more crimes than Caucasians, the only way this statement is supported by his article is if one agrees with his assertion that African-Americans are overrepresented in poor urban areas in the United States, and are thus overrepresented in the prison system as a result. *See id.* at 2. Although this supports his contention that Caucasians commit less crime per capita, it does not support his contention that African-Americans commit more crimes than Caucasians—it merely supports the argument that whichever race is overrepresented in poor urban areas will be overrepresented in the prison system. At the present time this happens to be African-Americans. It does not mean that inherent with being African-American is a disposition to commit crime.

72. MAUER & KING, *supra* note 2, at 11.

73. McAdams, *supra* note 17, at 2.

states are known for being traditionally racist. He goes on to suggest that this may have something to do with the fact that “[s]outhern states still have substantial rural black populations, while the Great Migration brought blacks into the central cities of Northern states.”⁷⁴ At first blush, this seems to have nothing to do with racial disparity; why would it matter how or for what reasons African-Americans moved into particular parts of non-southern states? However, after some statistical analysis,⁷⁵ a relationship between the racial disparity identified by the Sentencing Project Report and urban African-American population centers in states with high racial disparity is evident. “[S]tates with relatively few blacks in the central cities of metropolitan areas had low disparity scores, and those with a heavily urban central city black population showed high ratios.”⁷⁶ Further, the statistical model McAdams used produced substantial fluctuation regarding black-to-white incarceration ratios at the center of the racial disparity controversy:

A ten percent increase in the percentage of blacks living in central cities increased the disparity index by about one, and a 30 percent increase kicked it up by about three. We then added, for each state, the percentage of the black population below the poverty level, and the percentage of the white population below the poverty level. We found, as expected, that black poverty drove up the disparity ratio, and white poverty drove it down (as more whites were imprisoned).⁷⁷

McAdams’s contentions may be supported by similar statistical data available regarding Iowa.

B. Statistical Support for McAdams’s Argument in Iowa

Unfortunately for both Governor Culver and Representative Ford, McAdams’s argument may undermine Iowa’s minority impact statement legislation. According to collected statistical data regarding Iowa’s African-American population, twelve of the ninety-nine counties in the

74. *Id.*

75. *Id.* (“[W]e created a statistical model of racial disparity, including each state and the District of Columbia. In order to predict the disparity of each state, we simply used the proportion of blacks in the state who live in a central city of a Metropolitan Statistical Area.”); *see also id.* at 9 n.6 (“Populations were taken from 2000 Census data, Summary File 3. Ratios of incarceration were taken from ‘Table 16: Number of inmates in State prisons and local jails’ from the web site of the Bureau of Justice Statistics.”).

76. *Id.* at 2.

77. *Id.*

state account for 87.3% of Iowa's African-American population.⁷⁸ These twelve counties include twelve cities that make up a high percentage of the urban areas in Iowa.⁷⁹ Further, in 2006, nearly 19% of Iowa's African-American population lived at less than 50% of the poverty level for the state, compared to 4.3% of Caucasians.⁸⁰ These statistics—much like the data McAdams collected in Wisconsin—seem to support the argument that African-Americans are overrepresented in Iowa's urban areas compared with their overall state-wide population percentage of 3%.⁸¹ This in turn, according to McAdams's argument, accounts for the disparity in Iowa's criminal justice system. Because more African-Americans are located in Iowa's cities, and because urban areas generally have higher crime rates than rural areas (no matter the racial composition of either and especially so in poorer areas), more African-Americans in Iowa will be involved with crime, and thus African-Americans will be imprisoned at a higher rate. There is no denying that McAdams's argument is intriguing.

However, the alternative argument advanced by the Sentencing Project Report raises just as many questions. As McAdams points out, “[o]ne can argue, of course, that this country is just crawling with racists, and that racist cops, judges, prosecutors, and jurors are about as common [in Wisconsin] as anywhere else. But it's absurdly simplistic to point out

78. See IOWA DATA CENTER, RACE AND HISPANIC OR LATINO ORIGIN IN IOWA'S COUNTIES: 2000–2007, at 1–3 (2008), available at <http://data.iowadatecenter.org/datatables/CountyAll/coracehispanic20002007.pdf>. The twelve counties mentioned above, and their African-American populations, are: Black Hawk (10,323), Clinton (1,131), Des Moines (1,677), Dubuque (1,606), Johnson (4,988), Lee (1,104), Linn (7,302), Polk (22,461), Scott (10,953), Story (1,964), Webster (1,508), and Woodbury (2,628). *Id.* These counties contain 67,645 African-Americans (of 77,477 state-wide), which is approximately 87.3% of Iowa's African-American population. See *id.*

79. See U.S. Census Bureau, Iowa, 2008 Population Estimates (Geographies Ranked by Estimates), http://factfinder.census.gov/servlet/GCTTable?_bm=y&-context=gct&-ds_name=PEP_2008_EST&-mt_name=PEP_2008_EST_GCTT1R_ST9S&-CONTEXT=gct&-tree_id=808&-geo_id=04000US19&-format=ST-9|ST-9S&-lang=en (last visited Mar. 31, 2010). The twelve cities in those twelve counties are: Waterloo (Black Hawk), Clinton (Clinton), Burlington (Des Moines), Dubuque (Dubuque), Iowa City (Johnson), Fort Madison (Lee), Cedar Rapids (Linn), Des Moines (Polk), Davenport (Scott), Ames (Story), Fort Dodge (Webster), and Sioux City (Woodbury). *Id.*

80. IOWA DATA CENTER, CHARACTERISTICS OF PEOPLE AT SPECIFIED LEVELS OF POVERTY: 2005–2006 (2007), available at <http://data.iowadatecenter.org/datatables/State/stPovertyCharacteristicsACS20052006.pdf>.

81. IOWA DATA CENTER, SELECTED HOUSING CHARACTERISTICS: 2007, at 2 (2008), available at <http://data.iowadatecenter.org/DemographicProfiles/State/stACSDp2007.pdf>.

that Wisconsin's disparity ratio is especially high."⁸² This is what may have happened in Iowa. Merely showing that Iowa incarcerates African-Americans at a rate substantially higher than other states based on a simple division of African-American incarcerations per 100,000 over Caucasian incarcerations per 100,000 does little to answer the question of why such a disparity exists. If anything, an investigation of Iowa statistics may show that, assuming McAdams's argument is correct, Iowa is right where it is supposed to be with regard to racial disparity in its criminal justice system.

Whether one agrees with the Sentencing Project Report's conclusion that Iowa's criminal justice system has racist components, thus accounting for Iowa's high African-American incarceration rate, or with McAdams's argument that the racial composition of urban areas—which are prone to higher crime rates regardless of racial composition and which are predominantly African-American in Iowa's case—account for Iowa's racial disparity, the disparity in Iowa still exists. And not only does the disparity exist, it exists at a rate nearly three times the national average. Regardless of the competing arguments accounting for this disparity, poor urban areas in Iowa—which have larger African-American populations—send more people to prison. What can be done to correct such disparity, and is it something Iowa is willing to do?

C. *Minority Impact Statements in McAdams's Iowa*

One possible solution to this problem is minority impact statements.⁸³ But according to McAdams's argument (which appears to be supported by data from Iowa), no matter what correctional legislation is passed, it will automatically have a disparate effect on Iowa's minority populations because those populations are located in poor urban areas where more crime is committed.⁸⁴ Therefore, the questions lawmakers should consider when deciding to enact new correctional legislation—"whether the disparity [is] 'unwarranted' because of racial effects or 'warranted' due to the need to provide public safety resources for the African-American community"—will, in this political climate, most likely lead lawmakers to find that such legislation is warranted.⁸⁵

If crimes are being committed at a higher rate in Iowa's urban areas, which happen to be populated heavily with African-Americans, the

82. McAdams, *supra* note 17, at 2.

83. MAUER & KING, *supra* note 2, at 16.

84. *See* McAdams, *supra* note 17, at 2.

85. Mauer, *supra* note 32, at 37.

disparate impact will be acceptable because Iowa legislators will want to keep those areas as safe as possible. Essentially, Iowa's minority impact legislation will not accomplish anything with regard to decreasing the racial disparity in the State's criminal justice system. It is a mirage. Wealth, not race, needs to be the focus. Because of this, it is imperative that a different approach to Iowa's apparent racial disparity be considered.

V. RECOMMENDATIONS

A. *Urban Impact Statement Legislation*

To begin with, it would be useful to reframe the issue and evaluate the impact new correctional legislation would have on Iowa's *urban* communities as a whole. No matter what side one chooses in the debate, as Representative Ford pointed out, it is still important that Iowa's laws remain "fair and equitable."⁸⁶ Evaluating potential legislation with an eye on the disparate impact it may have on Iowa's urban populations would go a long way towards correcting Iowa's racial disparity. Although this appears to be the same as Representative Ford's minority impact statement legislation, it would eliminate racial overtones, something that may hinder effective debate on important correctional legislation. Focusing attention on the impact new correctional legislation may have on urban communities would allow lawmakers to shape legislation in a more thoughtful manner. Lawmakers need to ask themselves not only why certain legislation may have a disparate effect on Iowa's minority populations, but why that same legislation appears to have a greater effect on Iowa's urban areas.

An example of this is seen in Iowa's drug-free school zones act. As mentioned above, certain "race neutral" policies have been shown to have a disparate effect on minority populations.⁸⁷ As noted in the Sentencing Project Report, "school zone drug laws produce severe racial effects due to housing patterns, whereby drug offenses committed near the urban areas that contain many communities of color are prosecuted more harshly than similar offenses in rural communities populated largely by whites."⁸⁸ Iowa currently has a drug-free school zone law, which provides for an additional five years of imprisonment for selling a controlled substance within "one thousand feet of the real property comprising a public or private

86. Posting of Dean Fiihr to Iowa House Democrats, *supra* note 12 (quoting Representative Wayne Ford).

87. MAUER & KING, *supra* note 2, at 17.

88. *Id.*

elementary or secondary school, public park, public swimming pool, public recreation center, or on a marked school bus.”⁸⁹ Although this may seem like a great idea, consider that this statute applies at all times, even in the middle of the night. It says nothing about attempting to sell drugs to children, something one could argue goes to the intent of the legislation. Moreover, one thousand feet is nearly three football fields long. How many houses, apartment complexes, gas stations, and grocery stores can fit within one thousand feet of the beginning of the “real property” of an elementary school or high school?

Although this legislation would obviously have a disparate impact on Iowa’s minority populations because Iowa’s African-American communities are located in urban areas, Caucasians in urban areas are subject to the legislation as well. Further, both African-Americans and Caucasians in Iowa have found themselves inadvertently subjected to the law, imprisoned for drug crimes committed within one thousand feet of the real property of a school in the middle of the night while selling drugs to other adults.

This goes to the intent of the legislation, something that the preparation of racial impact statements (as well as urban impact statements) will influence.⁹⁰ By starting a dialogue about the purpose and intended effect of correctional legislation, state legislators will craft their bills in a more thoughtful manner. Had this been done with Iowa’s drug-free school zone act—and had an urban impact statement been prepared—Iowa’s legislators might have considered the impact the poorly worded legislation would have on Iowa’s urban communities, no matter the racial composition. Had Iowa passed a more specific drug-free school zone law—that focused specifically on preventing school children from being exposed to illegal drugs, as opposed to a blanket provision not taking into account the residential layout of urban areas—fewer people, regardless of race, would be sentenced to prison for an extended period of time for a crime that is treated differently under Iowa law than the exact same crime one thousand feet away. And although decreasing racial disparity would not be a specific goal in the preparation of urban impact statements, the effect of the legislation on Iowa’s urban areas—heavily populated by African-Americans—would achieve the goal anyway.

89. IOWA CODE § 124.401A (2009).

90. See Mauer, *supra* note 32, at 19.

B. *Retroactive Application of Urban Impact Statements*

The Iowa government also failed to notice that, even if minority impact statement legislation is passed (which it was), and even if the severe racial disparity in Iowa actually exists as described in the Sentencing Project Report, then Iowa's racial disparity would continue into the future because whatever legislation caused the racial disparity remains in place. "In retrospect, it is clear that many of these effects could have been predicted prior to the adoption of the legislation."⁹¹ Iowa's minority impact statement legislation has no retroactive application ability.⁹² If a certain crime control policy or correctional statute is causing Iowa's racial disparity, it makes sense that Iowa's minority impact legislation should be applied retroactively. Retroactive application of the legislation would allow lawmakers to reassess any negative impact that statutes currently in force may have on Iowa's minority communities. Without such retroactive application, there is no reason to think that the racial disparity will decrease in the future. However, retroactive application is, for a number of reasons, obviously not feasible in many cases. The cost would most likely be astronomical, and the idea of a politician publicly questioning the practicality of a drug-free school zone act is laughable.

C. *Minority Impact Statements and Increased Judicial Discretion in Sentencing Determinations*

How will minority impact statements affect Iowa jurisprudence? The United States Supreme Court's decision in *McCleskey v. Kemp* may shed some light on this issue.⁹³ *McCleskey* dealt with racially disparate application of the death penalty in Georgia.⁹⁴ Although seemingly overwhelming statistical evidence was presented by the defense showing that the claimed racial disparity existed, the Court determined that "[i]t [was] not the responsibility—or indeed even the right—of [the] Court to determine the appropriate punishment for particular crimes. It is the legislatures, the elected representatives of the people, that are 'constituted to respond to the will and consequently the moral values of the people.'"⁹⁵

91. Mauer, *supra* note 32, at 19.

92. *See generally* H.F. 2393, 82d Gen. Assem., Reg. Sess. (Iowa 2008) (providing no provisions for retroactive application).

93. *See* *McCleskey v. Kemp*, 481 U.S. 279 (1987).

94. *See generally id.* (considering *McCleskey's* allegation on appeal that the capital sentencing process in Georgia violated his Eighth and Fourteenth Amendment rights due to its racially discriminatory administration).

95. *Id.* at 319 (citing *Furman v. Georgia*, 408 U.S. 238, 383 (1972)).

The Court further stated that “[l]egislatures also are better qualified to weigh and ‘evaluate the results of statistical studies in terms of their own local conditions and with a flexibility of approach that is not available to the courts.’”⁹⁶ This allowed the *McCleskey* Court to sidestep damning statistical data showing severe disparate treatment of African-American males with regard to the imposition of the death penalty in the South.⁹⁷ Will the introduction of minority impact statements by the Iowa legislature change this result in Iowa, such that it is now possible for courts to make case-by-case assessments when dealing with sentencing that has been shown to have a disparate effect on Iowa’s minority communities?

Although not mentioned specifically in Iowa’s minority impact statement legislation, it seems appropriate that such information should be made available to sentencing authorities—the point at which the racial disparity in Iowa apparently comes into existence. The first paragraph of Iowa Code section 901.5 reads:

After receiving and examining all pertinent information, including the presentence investigation report and victim impact statements, if any, the court shall consider the following sentencing options. The court shall determine which of them is authorized by law for the offense, and of the authorized sentences, which of them or which combination of them, in the discretion of the court, will provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others.⁹⁸

I propose that the first sentence of Iowa Code section 901.5 be changed to read: “After receiving and examining all pertinent information, including the presentence investigation report, victim impact statements, and minority impact statements, if any, the court shall consider the following sentencing options.” By allowing courts to take into consideration information contained in minority impact statements, sentencing discretion will be enhanced, allowing courts to look at the racially disparate impact that certain policies—and thus certain sentences—promulgate.

Further, when pronouncing judgments and sentences, Iowa courts should look to the language contained in cases such as *State v. Privitt*, in which the Iowa Supreme Court determined that “[a]n abuse of discretion is

96. *Id.* (citing *Gregg v. Georgia*, 428 U.S. 153, 186 (1976)).

97. *See id.* at 317–19.

98. IOWA CODE § 901.5 (2009).

found only when the sentencing court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable.”⁹⁹ Adding clarity to that pronouncement, the court has gone further, stating that when applying their discretion, courts

should weigh and consider all pertinent matters in determining proper sentence[s], including the nature of the offense, the attending circumstances, defendant’s age, character and propensities and chances of his reform. The courts owe a duty to the public as much as to defendant[s] in determining a proper sentence. The punishment should fit both the crime and the individual.¹⁰⁰

This judicial discretion could go a long way in correcting the disparate impact certain legislation may have on Iowa’s minority communities.

V. CONCLUSION

Iowa’s minority impact statement legislation seemed like a great idea at the time. And frankly, who could blame either Governor Culver or Representative Ford for enacting legislation with such a lofty purpose? Unfortunately, with today’s twenty-four hour news cycle and the media’s attack-dog mentality, a story about a state having an apparent extreme racial disparity in its criminal justice system may have caused the executive and legislature to act too quickly. The result is legislation that cannot fulfill its purpose. Iowa’s racial disparity could very well be the result of the composition of its urban areas. Although this speaks to race, it speaks even more to the numerous and interrelated socioeconomic, psychological, and cultural factors that vary from state to state. Focusing on race issues when the focus should be on community composition as a whole does more to harm the criminal justice system than it does to correct it. Iowa needs to move away from focusing on the disparate impact that legislation may have on the state’s minority populations, and instead focus on the disparate impact of legislation on urban communities as a whole. Iowa also needs to

99. *State v. Privitt*, 571 N.W.2d 484, 486 (Iowa 1997) (citing *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996)).

100. *State v. Hildebrand*, 280 N.W.2d 393, 396 (Iowa 1979) (quoting *State v. Cupples*, 152 N.W.2d 277, 280 (Iowa 1967)); *see also State v. Laffey*, 600 N.W.2d 57 (Iowa 1999) (holding trial court abused its discretion by relying on the difficulty in explaining to minor plaintiffs concurrent versus consecutive sentencing in determining the appropriate sentence); *State v. August*, 589 N.W.2d 740 (Iowa 1999) (finding no abuse of discretion when trial judge took into account the defendant’s age, lack of criminal history, personality and character traits, and seriousness of offense when sentencing defendant to consecutive terms).

re-evaluate laws currently on the books that have a disparate impact on individuals located in urban areas. Further, an increase in judicial discretion with regard to information contained in minority impact statements could go a long way toward correcting the apparent racial disparity in Iowa's criminal justice system.

This is a complicated and touchy subject, but solutions need to be found. National Public Radio interviewed Governor Culver following the passage of Iowa's minority impact statement legislation. He said it was a "smart, kind of common sense approach that will more likely than not help us govern more effectively and make us pause and think about the impact that certain types of legislation might have on minority communities across our state."¹⁰¹ He spoke of "having the political courage . . . to admit that we've got some real discrepancies out there, and they're not going to change unless we are willing to admit that we've got some problems."¹⁰² Iowa should at least be thankful that it has some political courage.

*David A. Rossi**

101. Interview by Farai Chideya with Governor Chet Culver, Iowa (May 1, 2008), available at <http://www.npr.org/templates/story/story.php?storyId=90102924>.

102. *Id.*

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Racial Impact Statements

CHANGING POLICIES TO ADDRESS DISPARITIES

BY MARC MAUER

In reaction to a study that found Iowa topped the nation in racial disparity in its prison population, Iowa Governor Chet Culver in April 2008 made history by signing into law the nation's first piece of legislation to require policy makers to prepare racial impact statements for proposed legislation that affects sentencing, probation, or parole policies. In signing the bill, Gov. Culver noted that "I am committed to making sure government at all levels reflects our shared values of fairness and justice." In the following months Connecticut and Wisconsin took similar action.

These policy initiatives come at a moment when the scale of racial disparity within the criminal justice system is truly staggering. One of every nine black males between the ages of 20 and 34 is incarcerated in prison or jail, and one of every three black males born today can expect to do time in state or federal prison if current trends continue. For Hispanic males, the lifetime odds of imprisonment are one in six. Rates for women are lower overall, but the racial/ethnic disparities are similar.

The effects of high rates of incarceration go beyond the experience of imprisonment itself, and have broad consequences for both the offender and the community. A prison term results in challenges in gaining employment, reduced lifetime earnings, and restrictions on access to various public benefits. Families of offenders themselves experience the shame and stigma of incarceration, as well as the loss of financial and emotional support with a loved one behind bars. And for the community at large, the challenges of reentry result in high rates of recidivism and the consequent costs of a burgeoning prison system.

Thus, we are faced with twin problems in the justice system. Clearly, we need policies and practices that can work effectively to promote public safety. At the same time, it also behooves us to find ways to reduce the disproportionate rate of incarceration for people of color. These are not competing goals. If we are successful in addressing crime in a proactive way, we will be able to re-

duce high imprisonment rates; conversely, by promoting racial justice we will increase confidence in the criminal justice system and thereby aid public safety efforts.

Reducing minority rates of confinement is a complex process. These outcomes result from a complex set of factors, including socioeconomic disadvantages, involvement in criminal behavior, resource allocation in the criminal justice system, sentencing policies, limited diversionary options, and biased decision making among practitioners. We can debate the relative contribution of each of these factors, but there are few who would dispute that each plays at least some role.

The premise behind racial impact statements is that policies often have unintended consequences that would be best addressed prior to adoption of new initiatives. In this sense they are similar to fiscal and environmental impact statements. Policy makers contemplating new construction projects or social initiatives routinely conduct such assessments, which are now widely viewed as responsible mechanisms of government.

Racial impact statements are particularly important for criminal justice policy because it is exceedingly difficult to reverse sentencing policies once they have been adopted. The classic example in this regard is the federal crack cocaine mandatory sentencing policies. Adopted in 1986 and 1988, at a time of widespread concern about this new form of cocaine, the laws were hastily passed by Congress with virtually no discussion of their potential racial impact. Two decades later, the results are in and they are very sobering. More than 80 percent of the prosecutions for crack (as opposed to powder cocaine) offenses have been of African Americans, far out of proportion to the degree that they use the drug, and there is broad consensus that the penalties are overly punitive. (U.S. Sentencing Commission, *Cocaine and Federal Sentencing Policy*, May 2007.) But despite the fact that the U.S. Sentencing Commission amended its guidelines for crack offenses in 2007, and bipartisan legislation has been introduced in Congress to scale back the penalties, the mandatory sentencing policies remain in place today.

Reports Offer Hard Numbers

Although in recent years there has been increasing attention to issues of race and criminal justice, two policy

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reports issued in 2007 provided lawmakers with renewed incentive to address these issues. In a study titled “And Justice for Some,” the National Council on Crime and Delinquency found wide racial disparities in the juvenile justice system nationally. (Report available at <http://www.buildingblocksfor youth.org/justiceforsome/jfs.html>.) At the state level, Wisconsin led the nation in the degree of racial disparity among youths in custody, with children of color being detained at more than 10 times the rate of white youth.

State officials responded to the report with alarm, leading Governor Jim Doyle to establish a broad-based Governor’s Commission on Reducing Racial Disparities in the Wisconsin Justice System. The commission reviewed policies, analyzed data, and heard citizen testimony over the course of the year, and then issued a comprehensive report with recommendations for reducing disparities at each stage of the system. Following that release, in April 2008 Governor Doyle issued a sweeping executive order calling on all relevant state agencies to track decision making by race, to create an oversight commission charged with advocating for policies to reduce disparities, and to support a range of practices regarding reentry and alternatives to parole revocation.

A second report, “Uneven Justice,” produced by The Sentencing Project, analyzed racial and ethnic disparities in the adult criminal justice system. (“Uneven Justice” available at http://www.sentencingproject.org/Admin/Documents/publications/rd_stateratesofincbyraceandethnicity.pdf.) The report found that nationally, African Americans were nearly six times as likely as whites to be incarcerated, but that there was a broad variation in this ratio among the states. States in the upper Midwest and in the Northeast generally had the highest rates of disparity, representing a combined effect of higher than average black rates of incarceration along with lower than average white rates. The State of Iowa led the nation with a black/white ratio of more than 13 to 1.

The public and political response to the findings in Iowa was substantial. The report received front-page coverage and subsequent editorials in the *Des Moines Register*, and statements of concern from Gov. Culver. The legislative response was led by Rep. Wayne Ford, the longest serving African-American lawmaker in the state, who in 2008 introduced racial impact legislation. The bill quickly received broad support and was adopted almost unanimously. The legislation requires that in addition to preparing a correctional impact statement for proposed policy changes, the legislative services agency should also conduct a racial impact analysis that examines the impact of sentencing or parole changes on racial and ethnic minorities.

Concurrently, in Connecticut, Rep. Michael Lawlor,

chair of the state’s House Judiciary Committee and a longtime leader in justice reform, introduced a similar measure. The bill called for racial and ethnic impact statements to be prepared for bills and amendments that would increase or decrease the pretrial or sentenced populations of state corrections facilities. This legislation also received bipartisan support and was signed into law by Gov. Jodi Rell in June 2008.

The racial impact legislation adopted in Iowa and Connecticut will go into effect in 2009, but we already have a model in place that provides some guidance as to how these mechanisms can aid policy makers. In 2008, the Minnesota Sentencing Guidelines Commission began to conduct such inquiries for a proposed new sentencing policy. In their overview of the process, the commissioners noted their policy goals:

If a significant racial disparity can be predicted before a bill is passed, it may be possible to consider alternatives that enhance public safety without creating additional disparity in Minnesota’s criminal justice system. Just as with the Commission’s fiscal impact notes, the agency does not intend to comment on whether or not a particular bill should be enacted. Rather, it is setting out facts that may be useful to the Legislature, whose members frequently express concerns about the disparity between the number of minorities in our population and the number in our prisons.

(*Racial Impact for H.F. 2949*, Minnesota Sentencing Guidelines Commission, February 27, 2008.)

Thus, for one bill designed to increase penalties for robbery, the commission’s analysis found that “[m]inorities are even more over-represented among persons sentenced to prison for attempted aggravated robbery than non-minorities and their sentences would be increased if this bill were to be adopted. . . . The average increase in sentence length for those offenders would be 8 months for white offenders, 10 months for black offenders, 15 months for American Indian offenders, and 23 months for Hispanic offenders.” But for another bill, designed to defer judgment for certain controlled substance offenses, the commission concluded that it would have no impact on racial disparity in prisons since the legislation did not provide an option for diversion for those repeat drug offenders sentenced to imprisonment.

In considering the utility of such policies, lawmakers will need to consider the scope and procedures involved in establishing such mechanisms, including the following issues. (For greater detail, see Marc Mauer, *Racial Impact Statements as a Means of Reducing Unwarranted Sentencing Disparities*, 5 (No. 1) OHIO STATE J. CRIM. L. (Fall 2007).)

Scope of racial impact statements

While proposed changes in sentencing policies are the most obvious decision-making point at which unwarranted racial disparities might emerge, a host of policy decisions at other stages of the criminal justice system can affect the racial/ethnic demographics of the prison population as well. These include adjustments to sentencing guidelines, “truth in sentencing” and other policies that affect length of stay in prison, parole release and revocation policies, and “early” release mechanisms, such as participation in drug treatment or other programs. Conceivably, a racial impact statement policy could cover one or more of these decision-making points.

Preparation of racial impact statements

Depending on the jurisdiction, there are a variety of mechanisms and agencies that could be charged with preparing racial impact statements. These would include:

- *Sentencing Commissions*—In addition to the federal system, 21 states and the District of Columbia currently have a sentencing commission that in most cases should be capable of producing racial impact statements. Generally, these bodies have relatively sophisticated databases of sentencing data and trends, and usually contain relatively complete information on race, gender, and offense demographics. Some states, including North Carolina and Virginia, already maintain legislative requirements that their sentencing commissions produce impact statements to project any effects of new policy on the size of the prison population. And as described above, the Minnesota commission has begun to produce racial impact assessments as an outgrowth of an internal policy decision.
- *Budget and Fiscal Agencies*—Many state legislative analysts routinely produce fiscal and other analyses of legislative initiatives, and could be delegated to produce racial impact statements as well.
- *Departments of Correction*—State and federal corrections agencies now generally have sophisticated analytical tools with which they can produce detailed forecasts of changes in prison populations based on sentencing data and trends. To the extent that their databases contain information on race and ethnicity, it is likely that they could produce racial impact statements as well.

Policy implementation

Racial impact statements should be viewed as a mechanism to help guide the development of sound and fair policy, but they are not an impediment to enacting

changes in the law. That is, they represent one component of the discussion regarding sentencing policy, but only in conjunction with other relevant considerations. In some cases, lawmakers might receive analyses indicating that African Americans or other racial/ethnic groups would be disproportionately impacted by a proposed sentencing change, but conclude that public safety concerns override these considerations.

In order to see how this might play out in the legislative arena, consider two types of proposed changes. In the first example, legislators are contemplating a sentencing enhancement to school zone drug laws that penalize conduct committed within a certain distance of a school. The racial impact statement provides data indicating that African Americans would be disproportionately affected by such a change, most likely as a result of the disproportionate effect of these policies on the densely populated urban areas where African Americans are more likely to reside. If so, then lawmakers need to assess the concern about exacerbating racial disparity with the goal of providing greater public safety.

A key aspect of formulating policy in this regard relates to the breadth and effectiveness of the school zone law. Certainly, no one wants drug dealers peddling narcotics to school children on the playground during recess. But in some states, these laws also provide for additional penalties for drug transactions between consenting adults that take place in the middle of the night. Clearly, these drug sales are illegal, but should penalties be enhanced if they will disproportionately affect African Americans?

Using the public safety framework, legislators might decide that they could avoid exacerbating racial disparity and promote better public safety by tailoring the law itself rather than the punishment. For example, they could define the statute in a more targeted way, specifically focusing on selling drugs to children on school property. Such a policy could address legitimate concerns of the public while also delineating distinctions in penalties that would not adversely affect minority defendants.

In a second example, consider a legislative proposal to enhance mandatory sentences for robbery convictions. An impact statement produced for such a proposal might demonstrate that African Americans would be disproportionately affected by such a change as a result of greater involvement in the crime. After reviewing such documentation, many policy makers would be likely to place the concern for public safety above the objective of reducing racial disparity, and proceed with adopting the initiative. But it is also conceivable that legislators could use this analysis as an occasion to explore overall investments in public safety. For example, extending the length of time that persons convicted of robbery stay in prison clearly

provides some incapacitation benefits in crime control. But as offenders age in prison, their risk of recidivism generally declines, so at a certain point the additional cost of incarceration may not provide cost-effective approaches to producing public safety. For policy makers the question then becomes how to evaluate the degree of public safety produced through additional years of imprisonment compared to investing those funds in community policing, drug treatment, preschool programs, or other measures believed to be effective interventions. Reasonable people may disagree on how to answer this question, but it should frame the relevant questions.

Growing Movement to Address Disparity

Interest in the concept of racial impact statements is growing rapidly, both in the legal community and among policy makers. Within the ABA, in 2004 the Justice Kennedy Commission recommended a sweeping policy that legislatures “conduct racial and ethnic disparity impact analyses to evaluate the potential disparate effects on racial and ethnic groups of *existing statutes* and proposed legislation; . . . and propose legislative alternatives intended to eliminate predicted racial and ethnic disparity at each stage of the criminal justice process (emphasis added).” The policy was approved by the House of Delegates later that year.

Local initiatives highlight ways to address the issue in a collaborative way.

In 2007, as part of its revision to the Model Penal Code, the American Law Institute called for sentencing commissions to prepare projections to quantify “demographic patterns,” along with correctional resource projections. The ALI noted that “The provision does not dictate the policy decisions that will result. Rather, the provision treats numerical disparities in punishment as an important societal cost that must be considered along with other factors when the existing sentencing structure is assessed, or when changes within the system are contemplated.” (American Law Institute, “Model Penal Code: Sentencing,” 2007, p. 138.)

Policy makers and practitioners are also creating a range of mechanisms to address unwarranted disparities. In 2007, the Delaware Supreme Court, in conjunction with the Delaware Criminal Justice Council, convened a two-day Racial and Ethnic Fairness Summit. The meeting involved 75 key policy makers, practitioners, and community leaders in a frank discussion of how to promote policies that were both fair and *perceived* to be fair by all members of the community. The summit produced a working document of recommendations that is guiding the work of the Council in these areas.

Initiatives at the local level have highlighted ways in which jurisdictions can address issues of disparity in a collaborative way. In 2001, the mayor’s office in Bloomington, Indiana, convened a task force to address concerns about racial disparity raised by community groups. Over a two-year period, aided by researchers at Indiana University, the group analyzed a wealth of local data regarding arrests, charging, prosecution, and sentencing in order to aid policy makers in assessing what changes in policy or practice could reduce unwarranted disparities.

An ongoing project of the Vera Institute of Justice provides a means of developing practical approaches to addressing disparities within the prosecution function. The multiyear project is working with prosecutors in three jurisdictions—Milwaukee, Mecklenberg County (Charlotte), N.C., and San Diego—to collect and analyze data regarding decision making in prosecutors’ offices. Based on their findings, the project staff will aid prosecutors in adapting case management systems to collect data on racial dynamics, develop protocols for ongoing review of data, and implement corrective policies and procedures.

At the federal level, bipartisan legislation introduced in the 110th Congress by Sen. Joseph Biden (D-Del.) and Sen. Arlen Specter (R-Pa.) was focused on providing federal prosecutors with a mechanism by which they could engage

a broad segment of the community in assessing the racial dynamics of prosecution. The Justice Integrity Act of 2008 called for establishing broad-based task forces in 10 U.S. attorney districts, comprised of leaders from the jurisdiction’s federal and state justice systems, as well as community representatives. The task forces would be charged with producing racial and ethnic fairness plans that analyze data on prosecutorial decision making, assessing whether disparities are explained by relevant legal variables, and recommending policies and practices to reduce any unjustified disparities. It is expected that the bill will be reintroduced in 2009.

Conclusion

Issues of race and justice permeate American society, but nowhere are they as profound as in the criminal justice system. Racial and ethnic disparities result from a complex set of factors, many beyond the purview of the criminal justice system. But criminal justice leaders have an opportunity, and an obligation, to ensure that their policies and practices at the very least do not exacerbate any unwarranted disparities. Racial impact statements offer one means by which policy makers can begin to engage in a proactive assessment of how to address these challenging issues in a constructive way. ■

By: Dutton

H.B. No. 930

A BILL TO BE ENTITLED

AN ACT

relating to a criminal justice policy impact statement attached to certain bills or resolutions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 314, Government Code, is amended by adding Section 314.005 to read as follows:

Sec. 314.005. CRIMINAL JUSTICE POLICY IMPACT STATEMENT.

(a) The board shall prepare a criminal justice policy impact statement for each bill or resolution that authorizes or requires a change in the sanctions applicable to adults convicted of a felony.

(b) The impact statement must include information concerning:

(1) the estimated number of criminal cases each year that the legislation will impact;

(2) the fiscal impact of imprisoning or imposing other sanctions on persons in accordance with the legislation;

(3) the impact of the legislation on major racial and ethnic minority groups;

(4) the impact of the legislation on existing correctional facilities, as defined by Section 1.07, Penal Code;

(5) the likelihood that the legislation may create a need for additional prison capacity; and

(6) any other matter the board determines relevant.

(c) The board shall consult with the Department of Public

1 Safety and the Texas Department of Criminal Justice to develop a
2 protocol for analyzing the impact of the bill or resolution on
3 racial and ethnic minority groups.

4 (d) The impact statement must be attached to the bill or
5 resolution immediately following the fiscal note attached under
6 Section 314.003.

7 SECTION 2. This Act takes effect immediately if it receives
8 a vote of two-thirds of all the members elected to each house, as
9 provided by Section 39, Article III, Texas Constitution. If this
10 Act does not receive the vote necessary for immediate effect, this
11 Act takes effect September 1, 2009.

CT General
Assembly

Senate Joint

Resolution No. 1

January Session, 2009

LCO No. 348

00348_____

Referred to Committee on No Committee

Introduced by:

SEN. LOONEY, 11th Dist.

REP. MERRILL, 54th Dist.

RESOLUTION CONCERNING THE JOINT RULES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES.

Resolved by this Assembly:

That the following shall be the Joint Rules of the Senate and House of Representatives for the regular sessions of the General Assembly and for interim periods during the 2009-2010 legislative term.

(c) *Fiscal Notes and Bill Analyses; Bills or Resolutions Unfavorably Reported; List of Reported Bills or Resolutions.* (1) Any bill reported favorably by any committee which if passed, would affect state or municipal revenue or would require the expenditure of state or municipal funds, shall have a fiscal note attached, as required by section 2-24 of the general statutes. The fiscal note and a bill analysis shall be printed with the bill and shall bear the same file number as the bill. Any fiscal note printed with or prepared for a bill and any analysis of a bill printed with or prepared for a bill, are solely for the purpose of information, summarization and explanation for members of the General Assembly and shall not be construed to represent the intent of the General Assembly or either chamber thereof for any purpose. Each such fiscal note and bill analysis shall bear the following disclaimer: "The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose." When an amendment is offered to a bill or resolution in the House or the Senate, which, if adopted, would require the expenditure of state or municipal funds or affect state or municipal revenue, a fiscal note shall be available at the time the amendment is offered and, in the case of an amendment which is substantially similar to a favorably-reported bill for which a racial and ethnic impact statement has been prepared pursuant to this rule, such fiscal

note may include a copy of such impact statement. Any fiscal note prepared for such an amendment shall be construed in accordance with the provisions of this rule and shall bear the disclaimer required under this rule. Each fiscal note prepared under this subdivision shall include a brief statement of the sources of information, in addition to the general knowledge of the fiscal analyst, consulted or relied on to calculate the fiscal impact.

(2) Whenever a committee reports a bill favorably which, if passed, would increase or decrease the pretrial or sentenced population of correctional facilities in this state, a majority of the committee members present may request that a racial and ethnic impact statement be prepared. The racial and ethnic impact statement shall be prepared by the Office of Legislative Research and the Office of Fiscal Analysis, which may, in the preparation of such statement, consult with any person or agency including, but not limited to, the Judicial Branch, the Office of Policy and Management, the Department of Correction and the Connecticut Sentencing Task Force. The statement shall indicate: (A) Whether the bill would have a disparate impact on the racial and ethnic composition of the correctional facility population and an explanation of that impact, (B) that it cannot be determined whether the bill would have a disparate impact on the racial and ethnic composition of the correctional facility population, or (C) that the offices cannot determine within the time limitation specified in Rule 13(c) whether the bill would have a disparate impact on the racial and ethnic composition of the correctional facility population. The racial and ethnic impact statement shall be attached to and printed with the bill and shall bear the same file number as the bill. Any racial and ethnic impact statement printed with or prepared for a bill is solely for the purpose of information, summarization and explanation for members of the General Assembly and shall not be construed to represent the intent of the General Assembly or either chamber thereof for any purpose. Each racial and ethnic impact statement shall bear the following disclaimer: "The following Racial and Ethnic Impact Statement is prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and does not represent the intent of the General Assembly or either chamber thereof for any purpose."

(3) All bills or resolutions unfavorably reported by a committee shall be submitted to the Legislative Commissioners' Office not later than 5 p.m. on the final reporting out date for favorable reports for that committee, designated in the schedule shown in this rule.

(4) The legislative commissioners shall prepare a list of the bills or resolutions submitted to them which at the deadline time for each committee are not printed and in the files and the clerks shall print the same in the House and Senate journals.

Source: <http://www.cga.ct.gov/2009/TOB/S/2009SJ-00001-R00-SB.htm>

OLR Bill Analysis

sHB 6581

AN ACT CONCERNING THE ENHANCED PENALTY FOR THE SALE OR POSSESSION OF DRUGS NEAR SCHOOLS, DAY CARE CENTERS AND PUBLIC HOUSING PROJECTS.

SUMMARY:

This bill makes a number of changes to the laws that enhance the penalties for illegal drug activities near schools, day care centers, and public housing projects. Under current law, a mandatory sentence applies in addition and consecutive to any prison term imposed for the underlying crime as follows:

1. one year for possessing drug paraphernalia within 1,500 feet of property comprising a public or private elementary or secondary school when the perpetrator is not enrolled as a student there;
2. three years for selling illegal drugs within 1,500 feet of property comprising a (a) licensed child day care center identified by a conspicuous sign, (b) public or private elementary or secondary school, or (c) public housing project; and
3. two years for possessing illegal drugs within 1,500 feet of property comprising a (a) licensed child day care center identified by a conspicuous sign or (b) public or private elementary or secondary school when the perpetrator is not enrolled as a student there.

Under the bill, the prison sentence under these provisions remains a term that is in addition and consecutive to any prison term imposed for the underlying crime but the court can suspend all or a portion of it without meeting the criteria required by current law (see BACKGROUND). The bill also limits the scope of these provisions by:

1. reducing the size of the zones around the locations from 1,500 to

200 feet;

2. for schools, requiring the illegal activity to occur during regular school hours or hours of any school-sponsored activity conducted on the property where students are present; and
3. for day care centers, requiring the illegal activity to occur during the center's operating hours.

The bill specifies that the zones are measured from the perimeter of the property.

EFFECTIVE DATE: October 1, 2009

BACKGROUND

Departing From a Mandatory Minimum

Judges can impose less than the law's mandatory minimum sentence under these laws when no one was hurt during the crime and the defendant (1) did not use or attempt or threaten to use physical force; (2) was unarmed; and (3) did not use, threaten to use, or suggest that he had a deadly weapon (such as a gun or knife) or other instrument that could cause death or serious injury.

Defendants must show good cause and can invoke these provisions only once. Judges must state at sentencing hearings their reasons for (1) imposing the sentence and (2) departing from the mandatory minimum (CGS § 21a-283a).

Penalties for Illegal Drug Crimes

By law, the penalty for using or possessing with intent to use drug paraphernalia is a class C misdemeanor, punishable by up to three months in prison, a fine of up to \$500, or both. Delivering, possessing with intent to deliver, or manufacturing drug paraphernalia is a class A misdemeanor punishable by up to one year in prison, a fine of up to \$2,000, or both (CGS § 21a-267).

By law, selling, manufacturing, or distributing a hallucinogen (not marijuana) or narcotic is punishable (1) for a first offense, by up to 15

years in prison, a fine of up to \$50,000, or both; (2) for a second offense, up to 30 years, a fine of up to \$100,000, or both; and (3) for a subsequent offense, up to 30 years, a fine of up to \$250,000, or both. For marijuana and other controlled substances, the penalty is (1) for a first offense, up to seven years, a fine of up to \$25,000, or both and (2) for a subsequent offense, up to 15 years, a fine of up to \$100,000, or both (CGS § 21a-277).

By law, a non-drug dependent person selling, manufacturing, or distributing at least one ounce of heroin or methadone, one half ounce of cocaine or crack, or five milligrams of LSD is subject to five to 20 years in prison to life. For narcotics, hallucinogens, one kilogram or more of cannabis, or amphetamines, the penalty is (1) for a first offense five to 20 years and (2) for a subsequent offense, 10 to 25 years. There is an exception to the mandatory minimum sentence if the offender is under age 18 or had a significantly impaired mental capacity at the time (CGS § 21a-278).

By law, possession of narcotics is punishable (1) for a first offense, by up to seven years in prison, a fine of up to \$50,000, or both; (2) for a second offense, up to 15 years, a fine of up to \$100,000, or both; (3) for subsequent offenses, up to 25 years, a fine of up to \$250,000, or both. Possession of a hallucinogen or four or more ounces of marijuana is punishable (1) for a first offense, by up to five years in prison, a fine of up to \$2,000, or both and (2) for a subsequent offense, by up to 10 years, a fine of up to \$5,000, or both. Possession of other controlled substances or less than four ounces of marijuana is punishable (1) for a first offense, by up to one year in prison, a fine of up to \$1,000, or both and (2) for a subsequent offense, up to five years, a fine of up to \$3,000, or both (CGS § 21a-279).

Related Bill

sSB 349, favorably reported by the Judiciary Committee, decriminalizes the illegal possession of less than one half ounce of marijuana by anyone age 18 or older by reducing the penalty to a violation punishable by a \$250 fine.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 23 Nay 17 (04/01/2009)

OFA/OLR RACIAL AND ETHNIC IMPACT STATEMENT

sHB 6581

AN ACT CONCERNING THE ENHANCED PENALTY FOR THE SALE OR POSSESSION OF DRUGS NEAR SCHOOLS, DAY CARE CENTERS AND PUBLIC HOUSING PROJECTS.

Pursuant to PA 08-143 and Joint Rule 15(c)(2), a committee voted to require a racial and ethnic impact statement on this bill. Under the public act and rule, a committee can vote to require such a statement on a bill that would, if passed, increase or decrease the pretrial or sentenced population of state correctional facilities.

The following Racial and Ethnic Impact Statement is prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and does not represent the intent of the General Assembly or either chamber thereof for any purpose.

This statement sets out demographic information on the state's general population and in the criminal justice population, within the limits of data currently available in Connecticut. We obtained data from the Department of Correction (DOC), Judicial Branch, and U.S. Census. The precision of direct comparisons between the data sources is limited because each agency defines demographic categories differently.

IMPACT STATEMENT

The bill makes a number of changes to the laws that enhance the penalties for drug activity near schools, day care centers, and public housing projects. It:

1. allows the prison term imposed under these laws to be suspended under any circumstances, and not just the limited ones set by current law and
2. limits the scope of these laws by (a) reducing the size of the zones around the locations from 1,500 to 200 feet and (b) restricting the time of day when illegal activity occurring near schools and day care centers qualifies for the enhanced penalty.

The bill specifies that the zones are measured from the perimeter of the property.

The available data shows disparities between the demographics of the general population and the demographics of offenders incarcerated for the crimes affected by the bill. Based on the data, the proportion of black and Hispanic inmates for drug offenses in general and for the drug offenses directly affected by the bill is greater than their proportion of the general population (see BACKGROUND). The proportion of white inmates is lower than their proportion of the general population.

Because the bill (1) gives the court discretion to suspend the sentence enhancements, which could reduce the length of prison sentences for offenders convicted under these statutes and (2) reduces the scope of these laws, which could reduce the number of people sentenced to prison under them, it could reduce this disparity between the general population and the prison population. But the bill’s impact is unclear because of the (1) small number of offenders currently incarcerated for these crimes and (2) lack of data on plea bargaining that is only available from police, prosecutor, and court case files.

DOC Statistics for Drug Crimes

Based on data provided by DOC, 3,649 offenders were incarcerated with a drug crime as their most serious offense on January 1, 2009. Of these offenders, 17 were incarcerated under the enhanced penalties affected by the bill (all of these involved possession of illegal drugs). Table 1 displays this data.

Table 1: Offenders Incarcerated With Drug Crimes as Their Most Serious Offense, January 1, 2009

	<i>Black</i>	<i>Hispanic</i>	<i>White</i>	<i>Asian</i>	<i>American Indian</i>
<i>All Drug Offenses</i>					
Sentenced (3,649 inmates)	54.78%	33.08%	11.67%	0.33%	0.13%

Unsentenced (608 inmates)	47.20%	29.61%	23.03%	0.0%	0.16%
<i>Drug Offenses Near Prohibited Places</i>					
Sentenced or Unsentenced (17 inmates)	29.41%	29.41%	41.18%	0.0%	0.0%

Judicial Branch Data for Drug Crimes

Based on Judicial Branch data, the courts disposed of 41,253 drug offenses in 2008. Of these, 5,999 were drug zone offenses affected by the bill. This amounts to 14.54% of all drug offenses.

For all drug offenses, 25.81% resulted in a conviction. For the drug zone offenses, 0.67% resulted in a conviction.

This data is based on charges and not individuals. Thus, an individual could have more than one charge at a time and could have more than one charge in the course of a year.

Judicial Branch data is based on arrest reports and, in most instances, arrest reports do not show “Hispanic” as a category. Because Judicial Branch data reported on Hispanics is incomplete, we do not include it as a separate category. It is also important to note that because most arrest reports do not have a category for Hispanics, people who would otherwise be counted as Hispanic are counted in other categories, which inflates the numbers in those categories.

Table 2: Drug Offenses Disposed by the Courts in 2008

	<i>White</i>	<i>Black</i>	<i>Other</i>
<i>Offenses</i>			
All Drug Offenses (41,253 offenses)	61.67%	33.26%	5.07%
Drug Offenses Near Prohibited Places (5,999 offenses)	47.32%	46.37%	6.30%

<i>Convictions</i>			
All Drug Offenses (10,646 offenses)	55.98%	38.95%	5.06%
Drug Offenses Near Prohibited Places (40 offenses)	35.00%	65.00%	0.0%

Maps of Zones

In the past, OLR created maps showing how drug zone laws affect specific towns (see OLR Reports 2001-R-0330 and 2005-R-0460 and Program Review and Investigations Committee report *Mandatory Minimum Sentences*, 2005). We were not able to update these maps to show the affect of the bill on individual towns within the time frame for producing this statement. We will produce maps for four towns, to show how the bill affects different types of towns in a soon-to-be completed OLR Report (2009-R-0184).

BACKGROUND

State and Prison Populations

According to U.S. Census estimates for July 1, 2007 (the most recent estimate available with data on race and ethnicity), Connecticut’s total population is 3,502,309. The table below breaks down the state population by demographics, with Hispanics of any race counted as Hispanic and not included in any of the other demographic categories.

<i>U.S. Census Population Estimates for Connecticut, July 1, 2007</i>		
	<i>Population</i>	<i>Percent of Total Population</i>
White	2,604,349	74.36%
Hispanic	403,375	11.52%
Black or African American	327,250	9.34%
Asian	117,628	3.36%
American Indian and Alaska Native	8,178	.23%
Native Hawaiian and Other Pacific Islander	1,378	.04%
Two or More Races	40,151	1.15%
Total	3,502,309	100%

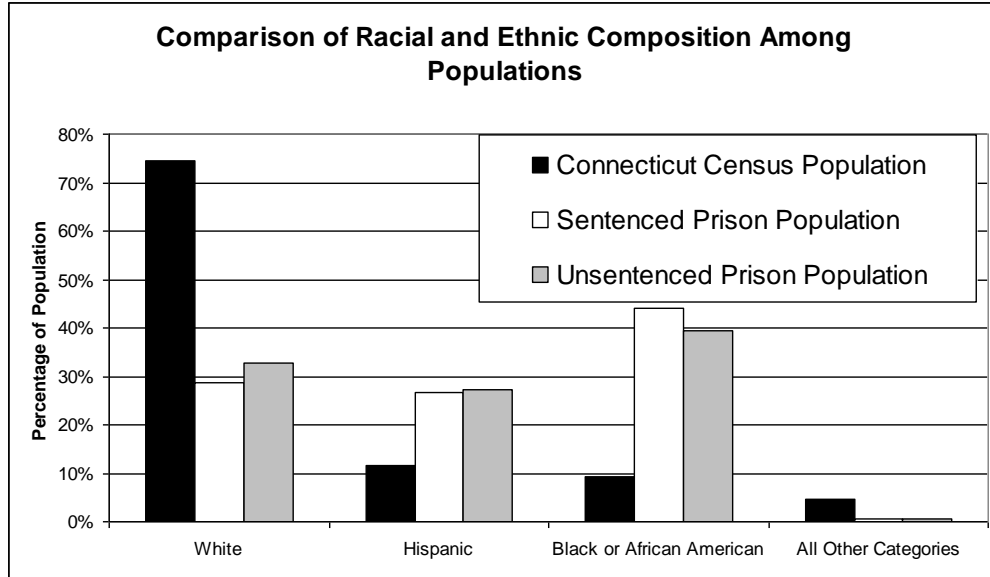
Using data provided by the DOC for January 1, 2009, the total sentenced prison population was 14,746 and the demographic composition of this population was:

- 28.68% white,
- 26.62% Hispanic,
- 44.10% black,
- 0.41% Asian, and
- 0.18% American Indian.

Also incarcerated is the unsentenced population that includes defendants held pretrial and convicted offenders awaiting sentencing. According to DOC, the unsentenced prison population on January 1, 2009 was 3,832 and the demographic composition of this population was:

- 32.72% white,
- 27.24% Hispanic,
- 39.35% black,
- 0.31% Asian, and
- 0.37% American Indian.

The chart below displays this Census and DOC prison population data.





OLR RESEARCH REPORT

December 10, 2008

2008-R-0681

IOWA'S MINORITY IMPACT STATEMENTS

By: Kevin E. McCarthy, Principal Analyst

You asked for information on the minority impact statements prepared by Iowa's legislative staff pursuant to recently adopted legislation. You were particularly interested in learning what types of legislation are accompanied by these statements and who prepares them. At your request, we have attached a prototype of such statements.

TYPES OF LEGISLATION ACCOMPANIED BY MINORITY IMPACT STATEMENTS

Under Iowa Code [Sec. 2.56](#), a correctional impact statement must be prepared for any bill, resolution, or amendment that (1) proposes a change in the law that creates a public offense, (2) significantly changes an existing public offense or the penalty for one, or (3) changes existing sentencing, parole, or probation procedures. The statement must be prepared before the floor debate on the legislation. It must include information concerning the estimated number of criminal cases per year that the legislation will affect; the fiscal impact of confining persons under the legislation; its impact on existing correctional institutions, community-based correctional facilities and services, and jails; the likelihood that the legislation will create a need for additional prison capacity; and other relevant matters. The statement must be factual and, if possible, provide a reasonable estimate of the legislation's immediate and long-range impact on prison capacity.

An act adopted this past session ([HF 2393](#)) requires that the statement also include the legislation's impact on minorities. Although the act does not define "minorities" for the impact statements the legislative staff must prepare, staff noted that they plan to use the same definition as in the grants provision of the act. The staff note that while the state has data on the race/ethnicity and gender of offenders, it does not regularly collect data on the proportion of offenders who have disabilities. Staff indicated that there is evidence that the proportion of offenders with disabilities, particularly mental illness, is substantially higher than the proportion of the population as a whole that have disabilities. For example a 2006 study by the state's Department of Corrections found that 33.8% of inmates in state prisons had mental illnesses.

WHO PREPARES THE STATEMENTS

The law requires the Iowa Legislative Services Agency (the analogue of Connecticut's Office of Legislative Management) to prepare the minority impact statement. The act requires the agency, in cooperation with the Division of Criminal and Juvenile Justice Planning in the Department of Human Rights, to develop a protocol for analyzing the impact of legislation on minorities. The agency has also consulted with the state's Judicial Branch and Department of Corrections in developing the minority impact statement. The agency has determined that the statements will be prepared by the agency's Fiscal Services Department in practice.

WHEN STATEMENTS ARE PREPARED

The underlying law requires legislative committees to state in their reports whether a correctional impact statement is required when they send legislation to the floor. It requires the legislative services agency to review all bills and joint resolutions placed on the calendar of either chamber, as well as amendments filed to bills or joint resolution on the calendar, to determine whether a correctional impact statement is required. It allows legislators to request that a statement be prepared by submitting a request to the legislative services agency. The agency must prepare a statement within a reasonable time after a request is made or it determines that a proposal is subject to these provisions. All statements approved by the agency must be transmitted immediately to the chief clerk of the house or the secretary of the senate, after notifying the legislation's sponsor that the statement has been prepared. The chief clerk or secretary must attach the statement to the legislation as soon as it is available. The agency may request the cooperation of any state department, agency, or political subdivision in preparing a statement.

Under the law, the statement must be revised if the correctional impact is changed by the adoption of an amendment. A revised statement may be prepared at the request of a legislator or if the agency determines this is appropriate. But, a request for a revision cannot delay action on the legislation unless ordered by the chamber's presiding officer.

KM:ts

Source: Connecticut General Assembly, Office of Legislative Research
<http://www.cga.ct.gov/2008/rpt/2008-R-0681.htm>

Excerpt of Public Act 08-143 authorizing racial and ethnic impact statements:

Sec. 5. (NEW) (*Effective from passage*) (a) Beginning with the session of the General Assembly commencing on January 7, 2009, a racial and ethnic impact statement shall be prepared with respect to certain bills and amendments that could, if passed, increase or decrease the pretrial or sentenced population of the correctional facilities in this state.

(b) Not later than January 1, 2009, the joint standing committee of the General Assembly on judiciary shall make recommendations for a provision to be included in the joint rules of the House of Representatives and the Senate concerning the procedure for the preparation of such racial and ethnic impact statements, the content of such statements and the types of bills and amendments with respect to which such statements should be prepared.

2013 Joint Rule 15(c) implementing the racial and ethnic impact statement requirements:

(c) *Fiscal Notes and Bill Analyses; Bills or Resolutions Unfavorably Reported; List of Reported Bills or Resolutions.* (1) Any bill or resolution reported favorably by any committee which if passed or adopted, would affect state or municipal revenue or would require the expenditure of state or municipal funds, shall have a fiscal note attached, as required by section 2-24 of the general statutes with respect to bills. The fiscal note for a bill or resolution and the analysis of a bill shall be printed with the bill or resolution and shall bear the same file number as the bill or resolution. Any fiscal note printed with or prepared for a bill or resolution and any analysis of a bill printed with or prepared for a bill, are solely for the purpose of information, summarization and explanation for members of the General Assembly and shall not be construed to represent the intent of the General Assembly or either chamber thereof for any purpose. Each such fiscal note and bill analysis shall bear the following disclaimer: "The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose." When an amendment is offered to a bill or resolution in the House or the Senate, which, if adopted, would require the expenditure of state or municipal funds or affect state or municipal revenue, a fiscal note shall be available at the time the amendment is offered and, in the case of an amendment which is substantially similar to a favorably-reported bill for which a racial and ethnic impact statement has been prepared pursuant to this rule,

such fiscal note may include a copy of such impact statement. Any fiscal note prepared for such an amendment shall be construed in accordance with the provisions of this rule and shall bear the disclaimer required under this rule. Each fiscal note prepared under this subdivision shall include a brief statement of the sources of information, in addition to the general knowledge of the fiscal analyst, consulted or relied on to calculate the fiscal impact.

(2) Whenever a committee reports a bill favorably which, if passed, would increase or decrease the pretrial or sentenced population of correctional facilities in this state, a majority of the committee members present may request that a racial and ethnic impact statement be prepared. The racial and ethnic impact statement shall be prepared by the Office of Legislative Research and the Office of Fiscal Analysis, which may, in the preparation of such statement, consult with any person or agency including, but not limited to, the Judicial Branch, the Office of Policy and Management, the Department of Correction and the Connecticut Sentencing Commission. The statement shall indicate: (A) Whether the bill would have a disparate impact on the racial and ethnic composition of the correctional facility population and an explanation of that impact, (B) that it cannot be determined whether the bill would have a disparate impact on the racial and ethnic composition of the correctional facility population, or (C) that the offices cannot determine within the time limitation specified in Rule 13(c) whether the bill would have a disparate impact on the racial and ethnic composition of the correctional facility population. The racial and ethnic impact statement shall be attached to and printed with the bill and shall bear the same file number as the bill. Any racial and ethnic impact statement printed with or prepared for a bill is solely for the purpose of information, summarization and explanation for members of the General Assembly and shall not be construed to represent the intent of the General Assembly or either chamber thereof for any purpose. Each racial and ethnic impact statement shall bear the following disclaimer: "The following Racial and Ethnic Impact Statement is prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and does not represent the intent of the General Assembly or either chamber thereof for any purpose."

Jetzer, Keri-Anne (OFM)

From: Lenstra, Beth [LEGIS] <Beth.Lenstra@legis.iowa.gov>
Sent: Monday, April 15, 2013 9:13 AM
To: Jetzer, Keri-Anne (OFM)
Cc: Lenstra, Beth [LEGIS]; Lyons, Holly [LEGIS]; Acton, Jennifer [LEGIS]; Snyder, Shawn [LEGIS]
Subject: RE: Minority Impact Statement Interest in Washington State
Attachments: HF 2393 Minority Impact Memo Copie of Fiscal Notes.pdf

Hello Keri-Anne –

The attached document contains a copy of HF 2393 – the enabling legislation for minority impacts in Iowa. The Bill became law July 1, 2008 (FY 2009). The legislation requires the LSA to work with the Department of Human Rights, Criminal and Juvenile Justice Planning Division (CJJPD is Iowa’s Statistical Analyses Center {SAC} for the justice system) in determining the impact.

The original enabling legislation also requires each applicant for grants from State agencies to provide a minority impact statement. The Office of Grants Enterprise Management within the Department of Management (DOM) has developed a form for agencies to use in gathering the information. The DOM contact is Kathy Mabie at 515-281-7076.

Also included in the attachment is a copy of the memo issued by Holly Lyons, Division Manager of the LSA’s Fiscal Services Division, regarding minority impact statements. This is the first legislative session the LSA has issued such a memo – it provides background information and serves as a reference for legislators, staff, and the general public. The memo cites the US Census data for Iowa and compares the racial makeup of the general population to the corrections population. It also provides national data from the US Department of Justice. The memo is posted on the LSA website for fiscal notes here - <https://www.legis.iowa.gov/LSAReports/fiscalNotes.aspx>

The attachment also includes two examples of fiscal notes that include a correctional, minority, and fiscal impact. HF 167 died and SF 384 (as amended and passed by the Senate) passed both chambers.

When the legislation was first enacted in 2008, the LSA formed a Team to conduct a literature review. The LSA Team also met with the following State agencies: CJJPD, Departments of Corrections, Public Safety, Transportation, and Justice, as well as the Department of Human Rights, Persons with Disabilities and Deaf Services Divisions. We also discussed the process with representatives of the Judicial Branch. The State of Minnesota was most helpful back in 2008. At that time, the State had no requirement to issue minority impacts, but the State agencies were doing so.

Iowa has comprehensive data bases for criminal justice information at the State level, including the Iowa Court Information System (ICIS – used by the Judicial Branch) and the Iowa Corrections Offender Network (ICON – used by the State Department of Corrections). Both ICIS and ICON feed data into the Justice Data Warehouse which is then used for such tasks as correctional impacts, minority impacts, prison population forecasts, and other data mining activities. The ICON system does provide some limited county jail information, for those offenders held in county jails that are then supervised on probation or parole or transferred to the State prison system. Otherwise, access to county jail data is not readily available (for offenders who receive a jail sentence only).

As far as cost for Iowa, there was no additional cost because existing staff in the Executive, Judicial, and Legislative Branches incorporated the work into their existing duties. When the minority impact statement was enacted, the LSA incorporated the minority impact statements into the correctional impact/fiscal notes. Minority impact statements in Iowa are required for bills with criminal penalties only.

As far as cost to implement racial impact statements in Washington, that would depend on the scope of the proposed legislation, availability and accuracy of existing databases, existing staff and their workloads, and the existing

infrastructure. For example, Iowa's Legislative Services Agency (LSA) has been required to provide a correctional impact on legislation with criminal penalties, as well as fiscal notes. The correctional impacts were included in the fiscal notes.

Please let me know if I may be of additional service.

From: Jetzer, Keri-Anne (OFM) [mailto:Keri-Anne.Jetzer@OFM.WA.GOV]
Sent: Friday, April 12, 2013 4:32 PM
To: Lenstra, Beth [LEGIS]
Subject: Minority Impact Statement Interest in Washington State

Hello Beth,

I have learned that Iowa completes minority impact statements alongside the correctional impact statements for criminal justice-related legislative proposals. I was told that you are the person to contact.

The Washington State Sentencing Guidelines Commission is investigating the possibility of adding racial impact statements (your minority impact statements) alongside our fiscal impacts on proposed criminal sentencing legislation.

The Commission is in the early stage of its investigation and is interested to learn how other states have created their minority impact process, including such things as what components were considered when establishing the formulas for the calculations, were there any issues that arose and how were they resolved and to which agency was the responsibility assigned. Any documentation, information, or hyperlinks that you can provide would be greatly appreciated. And if it is possible to get an example or two of an actual minority impact statement along with the related legislation that would be very helpful too.

If you have any questions, please contact me. Thank you in advance for your assistance.

Keri-Anne Jetzer
Forecast Analyst, Forecasting Division
Staff Support, Sentencing Guidelines Commission
Office of Financial Management
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<http://www.ofm.wa.gov/sac>
<http://www.ofm.wa.gov/Forecasting>

House File 2393 - Enrolled

PAG LIN

1 1 HOUSE FILE 2393
1 2
1 3 AN ACT
1 4 PROVIDING REQUIREMENTS FOR MINORITY IMPACT STATEMENTS IN
1 5 RELATION TO STATE GRANT APPLICATIONS AND CORRECTIONAL
1 6 IMPACT STATEMENTS FOR LEGISLATION, AND PROVIDING EFFECTIVE
1 7 AND APPLICABILITY DATES.
1 8
1 9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
1 10
1 11 Section 1. Section 2.56, subsection 1, Code 2007, is
1 12 amended to read as follows:
1 13 1. Prior to debate on the floor of a chamber of the
1 14 general assembly, a correctional impact statement shall be
1 15 attached to any bill, joint resolution, or amendment which
1 16 proposes a change in the law which creates a public offense,
1 17 significantly changes an existing public offense or the
1 18 penalty for an existing offense, or changes existing
1 19 sentencing, parole, or probation procedures. The statement
1 20 shall include information concerning the estimated number of
1 21 criminal cases per year that the legislation will impact, the
1 22 fiscal impact of confining persons pursuant to the
1 23 legislation, the impact of the legislation on minorities, the
1 24 impact of the legislation upon existing correctional
1 25 institutions, community-based correctional facilities and
1 26 services, and jails, the likelihood that the legislation may
1 27 create a need for additional prison capacity, and other
1 28 relevant matters. The statement shall be factual and shall,
1 29 if possible, provide a reasonable estimate of both the
1 30 immediate effect and the long-range impact upon prison
1 31 capacity.
1 32 Sec. 2. Section 2.56, Code 2007, is amended by adding the
1 33 following new subsection:
1 34 NEW SUBSECTION. 4A. The legislative services agency in
1 35 cooperation with the division of criminal and juvenile justice
2 1 planning of the department of human rights shall develop a
2 2 protocol for analyzing the impact of the legislation on
2 3 minorities.
2 4 Sec. 3. NEW SECTION. 8.11 GRANT APPLICATIONS == MINORITY
2 5 IMPACT STATEMENTS.
2 6 1. Each application for a grant from a state agency shall
2 7 include a minority impact statement that contains the
2 8 following information:
2 9 a. Any disproportionate or unique impact of proposed
2 10 policies or programs on minority persons in this state.
2 11 b. A rationale for the existence of programs or policies
2 12 having an impact on minority persons in this state.
2 13 c. Evidence of consultation of representatives of minority
2 14 persons in cases where a policy or program has an identifiable
2 15 impact on minority persons in this state.
2 16 2. For the purposes of this section, the following
2 17 definitions shall apply:
2 18 a. "Disability" means the same as provided in section

2 19 15.102, subsection 5, paragraph "b", subparagraph (1).
 2 20 b. "Minority persons" includes individuals who are women,
 2 21 persons with a disability, Blacks, Latinos, Asians or Pacific
 2 22 Islanders, American Indians, and Alaskan Native Americans.
 2 23 c. "State agency" means a department, board, bureau,
 2 24 commission, or other agency or authority of the state of Iowa.
 2 25 3. The office of grants enterprise management shall create
 2 26 and distribute a minority impact statement form for state
 2 27 agencies and ensure its inclusion with applications for
 2 28 grants.
 2 29 4. The directives of this section shall be carried out to
 2 30 the extent consistent with federal law.
 2 31 5. The minority impact statement shall be used for
 2 32 informational purposes.
 2 33 Sec. 4. EFFECTIVE AND APPLICABILITY DATES. This Act takes
 2 34 effect July 1, 2008, and shall apply to grants for which
 2 35 applications are due beginning January 1, 2009.

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PATRICK J. MURPHY
 Speaker of the House

JOHN P. KIBBIE
 President of the Senate

3 12 I hereby certify that this bill originated in the House and
 3 13 is known as House File 2393, Eighty-second General Assembly.

3 14
 3 15
 3 16
 3 17
 3 18

MARK BRANDSGARD
 Chief Clerk of the House

3 19 Approved _____, 2008

3 20
 3 21
 3 22

3 23 CHESTER J. CULVER
 3 24 Governor



**LEGISLATIVE
SERVICES AGENCY**

Serving the Iowa Legislature

Glen Dickinson, Director

Holly Lyons
Division Director
State Capitol
Des Moines, IA 50319

Phone: 515.281.7845
E-mail: holly.lyons@legis.state.ia.us

To: Members of the Iowa General Assembly
From: Holly M. Lyons, Fiscal Services Division Director
Subject: Minority Impact Statements
Date: February 11, 2013

Pursuant to Iowa Code section [2.56\(1\)](#), the Legislative Services Agency is required to determine the potential impact on minorities of proposed legislation that creates a public offense, changes a current offense, or changes existing correctional procedures. Minority persons are defined in Iowa Code section [8.11](#) as women, persons with a disability, Blacks, Latinos, Asians or Pacific Islanders, American Indians, and Alaskan Native Americans. Disability is defined in Iowa Code section [15.102\(5\)\(b\)\(1\)](#). The statements below provide background information regarding minorities in the correctional system from a national and state perspective.

Iowa Census Information

The U.S. Census estimate for Iowa was 3.1 million people as of 2011 (the most current estimates available). Women comprise 50.5% of the population. Approximately 91.3% of Iowa's population is white. The composition of the remaining 8.7% is: 2.9% Black, 0.4% American Indian or Alaska Native; 1.7% Asian, 0.1% Hawaiian or Other Pacific Islander, 1.8% is of two or more races; and 1.8% unknown. A total of 5.0% of Iowa's population identified themselves as Hispanic or Latino (of any race). Approximately 11.2% of Iowa's population has at least one disability.

Prison System Information

The U.S. Department of Justice estimates there were 1.6 million prisoners incarcerated in federal or State prisons on December 31, 2011 (the most recent data available). Men comprised 93.3% of the total prison population. The following statistics are for offenders sentenced to more than one year of incarceration:

- 37.8% Black;
- 33.6% white;
- 22.8% Hispanic;
- 5.8% of other races or unknown.

Iowa's prison population was 8,333 offenders on June 30, 2012. Men comprised 91.8% of the population. A total of 6.5% of Iowa's prison population identified themselves as Hispanic (nearly all of these identified themselves racially as being white). According to the Criminal and Juvenile Justice Planning Division (CJJPD) of the Department of Human Rights, the racial composition of the prison system was:

- 64.5% white;
- 26.2% Black;
- 0.9% Asian or Pacific Islander;
- 1.8% American Indian or Alaska Native.

Probation and Parole Information

According to the Iowa Department of Corrections (DOC), on June 30, 2012, approximately 8.2% of the offenders in prison were women and 25.7% of offenders under supervision in Community-Based Corrections (CBC) were women. Approximately 21.9% of the total offender population under correctional supervision consisted of women.

According to the U.S. Department of Justice, on December 31, 2011, 75.0% of offenders on probation nationwide are men. Nationally, the racial composition of the probation population was:

- 54.0% white;
- 31.0% Black;
- 13.0% Hispanic or Latino;
- 1.0% American Indian or Alaska Natives;
- 1.0% Asian or Pacific Islander.

According to the U.S. Department of Justice, on December 31, 2011, 11.0% of offenders on parole nationwide are women. Nationally, the racial composition of the parole population was:

- 41.0% white;
- 39.0% Black;
- 18.0% Hispanic or Latino;
- 1.0% American Indian or Alaska Natives;
- 1.0% Asian or Pacific Islander.

Iowa's Corrections System (Prison, Probation, and Parole)

According to the Iowa DOC, the racial composition of offenders under correctional supervision on June 30, 2012 was:

- 74.7% white,
- 17.4% Black;
- 5.2% Hispanic or Latino;
- 1.2% American Indian or Alaska Natives;
- 1.0% Asian or Pacific Islander;
- 0.5% of unknown race.

Please contact Beth Lenstra at 281-6301 or Jennifer Acton at 281-7846 for further assistance.



Fiscal Note

Fiscal Services Division

HF 167 – Newborns and Illegal Drugs (LSB 1665HV)
 Analyst: Beth Lenstra (Phone: (515-281-6301) (beth.lenstra@legis.iowa.gov)
 Fiscal Note Version – New
 Requested by Representative Mary Wolfe

Description

House File 167 creates a new child endangerment offense, applied to a mother that causes an illegal drug to be present in her newborn child’s body. The new child endangerment offense is punishable as a Class “D” felony.

Background

Correctional and Fiscal Information

- According to the Department of Human Services (DHS), during calendar year 2011, there were 90 children aged one month or less that were victims of abuse related to illegal drugs in the child’s body. Typically, 21 (23.3%) of these children are placed in foster care and 69 (76.7%) remain at home and the family receives services from the DHS.
- The annual cost of foster care placement is \$9,235, with \$6,183 paid from State funds for the State share.
- It takes about 24 months to finalize an adoption. The average annual cost for adoption subsidy is approximately \$7,500, with \$4,200 being the State’s share.
- Termination of Parental Rights (TPR) proceedings cost \$1,800 per case to the indigent defense budget.
- Current law provides a graduated system of penalties for child endangerment, ranging from an aggravated misdemeanor to a Class “B” felony, depending on the specific crime and circumstances of the offense. Offenders charged under [Iowa Code section 726.6](#) may plead to a lesser offense and be convicted of an aggravated misdemeanor rather than the Class “D” felony imposed in the Bill.
- The marginal cost per day for State prison is \$17.60. The average cost per day for parole or probation in Community-Based Corrections (CBC) is \$3.66.
- According to the Justice Data Warehouse, the State Public Defender’s Office, the Department of Corrections (DOC), and the Judicial Branch, the following are estimates for sentencing, length of stay, indigent cost, and case cost for those convicted of a Class “D” felony or aggravated misdemeanor for crimes against persons or child endangerment offenses:

Criminal Justice System Information

Type of Conviction	Percent Sentenced to Prison	Avg Length of Stay in Prison	Percent Sentenced to Probation	Avg Length of Stay on Probation	Avg Length of Stay on Parole	Cost of Indigent Defense	Avg. Cost Per Case for Judicial Branch
Class "D"	25.0%	21 months	75.0%	33.9 months	12.5 months	\$1,200	\$427
Aggravated Misdemeanor	6.0%	8 months	94.0%	20.4 months	5.5 months	\$1,200	\$209

Minority Data Information

- The race of the mother is not tracked. Of the 90 children cited above, 68.0% were white, 16.0% were Black, 7.0% were identified with two or more races, 6.0% were listed as unknown, and 3.0% were American Indian, Alaska Native, Asian, or Hawaiian.
- Approximately 18.0% of offenders convicted of child endangerment in FY 2012 were Black.

Refer to the LSA memo addressed to the General Assembly, [Minority Impact Statements](#), dated February 11, 2013, for information related to minorities in the criminal justice system.

Assumptions

Correctional and Fiscal Information:

- There will be 69 children impacted annually. Of these, two-thirds (46) will be placed with relatives while one-third (23) will be placed in paid foster care.
- There will be 12 additional adoption cases annually under the Bill.
- There may be an increase in Termination of Parental Rights (TPR) proceedings. To the extent that these proceedings increase with indigent parties involved, there will be an impact on the indigent defense budget. That impact cannot be estimated, but is not expected to be significant.
- Charge, conviction, and sentencing patterns and trends will not change over the projection period.
- Prisoner length of stay, revocation rates, plea bargaining, and other criminal justice policies and practices will not change over the projection period.
- The law will become effective July 1, 2013. A lag effect of six months is assumed from the effective date to the date of first entry of affected offenders into the correctional system.
- These will be bench trials. Half of the defendants will be indigent.
- There will be an increase in county jail sentences for misdemeanor convictions. Marginal costs for county jails cannot be determined due to a lack of data. For the purpose of this analysis, the marginal cost for county jails is \$15.00 per day.

Minority Data Information: The impact on minorities will remain consistent with current data.

Summary of Impacts

Correctional Impact

There will be an estimated 44 offenders annually convicted under this Bill; these will be new offenders in the criminal justice system. Of the 44 offenders, 18 will be Class "D" felons and 26 will be aggravated misdemeanants. On an annual basis, these offenders will be sentenced as follows: seven annually to prison and 37 to probation. The table below shows the increase in the corrections population.

	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>
Prison	4	9	10	10	10
CBC	18	39	43	44	44
Total	22	48	53	54	54

On an annual basis, five offenders will be sentenced to county jail for an average length of stay of 33 days. These offenders will then be placed on CBC supervision.

Minority Impact

To the extent the Bill results in additional criminal convictions, there will be a disproportionate impact on minorities because approximately 16.0% to 18.0% of offenders convicted under the Bill's provisions may be minorities. Additional criminal convictions will result in an increased number of minority offenders supervised in the corrections system.

Fiscal Impact

The fiscal impact is estimated to be an increased cost of \$192,600 in FY 2014 and \$414,400 in FY 2015. The table below shows the impact by funding source. Criminal justice system costs are expected to level off in FY 2017, when the number of offenders entering the system is equivalent to the number of offenders exiting the system. The impact to the DHS budget will be to the foster care placement budget.

	FY 2014			FY 2015		
	General Fund	Federal Funds	Total	General Fund	Federal Funds	Total
Court System	\$ 19,200	\$ 0	\$ 19,200	\$ 38,000	\$ 0	\$ 38,000
Indigent Defense	28,000	0	28,000	54,000	0	54,000
Prison	13,000	0	13,000	58,000	0	58,000
CBC	12,000	0	12,000	52,000	0	52,000
DHS	80,400	40,000	120,400	142,200	70,200	212,400
Total	\$ 152,600	\$ 40,000	\$ 192,600	\$ 344,200	\$ 70,200	\$ 414,400

There will be a cost to county jail operating budgets of approximately \$2,500 annually.

There will be a cost to the DHS adoption subsidy program starting in FY 2016, of approximately \$90,000 annually, with \$50,400 paid from the General Fund for the State's share.

Sources

Department of Human Services
Department of Human Rights, Criminal and Juvenile Justice Planning Division
Department of Corrections
Judicial Branch
State Public Defender's Office

/s/ Holly M. Lyons

February 19, 2013

The fiscal note for this bill was prepared pursuant to [Joint Rule 17](#) and the Iowa Code. Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.



SF 384 – Law Enforcement Equipment Removal, Criminal Penalty (LSB 1927SV.1)
Analyst: Beth Lenstra (Phone: (515) 281-6301) (beth.lenstra@legis.iowa.gov)
Fiscal Note Version – As amended and passed by the Senate
Requested by Bob M. Kressig

Description

Senate File 384 as amended and passed by the Senate creates a new offense, removal of an officer's communication or control device, and provides a graduated system of penalties for the offense. This Bill also designates lesser penalties for the crime of interference with official acts for actions that result in bodily injury compared to those that result in serious injury.

Background

Correctional and Fiscal Information

- The new offense, removal of an officer's communication or control device, defines "officer" as a correctional officer or a person with a professional permit to carry a weapon. The correctional and fiscal impact cannot be estimated due to a lack of data. This Bill provides penalties ranging from a simple misdemeanor to a Class "D" nonforcible felony, depending on the circumstances of the crime.
- Current law provides for a graduated system of penalties for interference with official acts, ranging from a simple misdemeanor to a Class "C" felony depending on the circumstances of the crime.
- According to the Justice Data Warehouse, in FY 2012 there was one charge for Class "C" felony and one charge for Class "D" felony interference with official acts involving injury that resulted in a conviction not-as-charged.
- During FY 2012, there were 59 charges for aggravated misdemeanor interference with official acts involving injury that resulted in convictions not-as-charged. Of these, 57 resulted in simple misdemeanor convictions for interference with official acts (without injury).
- Offenders convicted of a simple misdemeanor offense are not supervised in Iowa's corrections system. They usually are sentenced to a financial penalty or community service, or some combination thereof.
- The impact on the judicial branch operating budget is the case cost difference of a simple misdemeanor (\$28) and a serious misdemeanor (\$209).
- The impact on the indigent defense budget is the case cost difference between a simple misdemeanor (\$300) and a serious misdemeanor (\$600).
- According to the Justice Data Warehouse, the Criminal and Juvenile Justice Planning Division (CJJPD), and the Department of Corrections, the following are estimates for sentencing, length of stay for a serious misdemeanor, and costs for interference with official acts:

Criminal Justice System Information

Conviction Offense Class	Percent Sentenced to Probation	Avg Length of Stay on Probation	Average Cost per Day for Prob/Parole	Percent Sentenced to County Jail	Avg Length of Stay in County Jail	Marginal Cost Per Day
Serious Misdemeanor	28.6%	12.5 months	\$3.66	57.1%	28 days	\$15.00

The sentencing percentage is 85.7% (combined probation and jail sentences). Approximately 14.3% of offenders convicted of this serious misdemeanor will receive a sentence other than probation or county jail incarceration, such as a financial penalty and/or community service.

Minority Data Information

The table below shows the FY 2012 offender-based convictions for interference with official acts, according to the Iowa Court Information System (ICIS). Minority offenders are disproportionately convicted compared to their percentage of the Iowa population.

FY 2012 Convictions for Interference With Official Acts

Conviction Offense Class	Percent White	Percent Black	Percent Hispanic	Percent Native American	Percent Asian	Percent Other or Unknown
Simple Misd.	65.0%	27.2%	5.3%	0.9%	0.8%	0.8%
Serious Misd.	58.3%	41.7%	0.0%	0.0%	0.0%	0.0%
Aggravated Misd.	59.9%	33.6%	5.3%	0.7%	0.0%	0.5%
Total Convictions	64.6%	27.6%	5.2%	0.9%	0.9%	0.8%

The minority impact of the new offense, removal of an officer's communication or control device, cannot be estimated due to a lack of data. Refer to the Legislative Services Agency (LSA) memo addressed to the General Assembly, [Minority Impact Memo](#), dated February 11, 2013, for information related to minorities in the criminal justice system.

Assumptions

Correctional and Fiscal Information:

- The new offense limits the definition of "officer." Also, the crime may be similar to the crime of disarming or attempting to disarm a peace officer of a dangerous weapon as defined in [Iowa Code section 708.13\(2\)](#). If so, there were five convictions for that offense in FY 2012. Therefore, there may be few convictions for the new offense of removal of an officer's communication or control device.
- Refer to the [Correctional Impact Memo](#), dated February 11, 2013, for information related to costs by crime class. The memo provides a range of costs based on actual costs and length of stay plus certain assumptions. A range of costs is provided for nonviolent crimes. The new crime created in this Bill may be at the higher end of the range because it may be considered a violent crime (against a person) rather than a nonviolent crime.
- In relation to the Bill's provisions regarding interference with official acts, charge, conviction, and sentencing patterns and trends will not change over the projection period.
- Prisoner length of stay, revocation rates, plea bargaining, and other criminal justice policies and practices will not change over the projection period for the crime of interference with official acts.

- This law will become effective July 1, 2013. A lag effect of six months is assumed from the effective date of the Bill to the date of first entry of affected offenders into the correctional system for the crime of interference with official acts.
- Under this Bill, more aggravated misdemeanor charges will result in serious misdemeanor convictions. Approximately half of the offenders currently being convicted of a simple misdemeanor will be convicted of a serious misdemeanor under this Bill's provisions.
- These will be bench trials and 50.0% of the offenders convicted will be indigent.
- There will be increases in county jail sentences for serious misdemeanor convictions.
- Marginal costs for county jails cannot be determined due to a lack of data. For purposes of this analysis, the marginal cost for county jail is assumed to be \$15.00 per day.

Minority Data Information:

- The minority impact of the new crime cannot be estimated due to a lack of data. The crime may be similar to the crime of disarming or attempting to disarm a peace officer of a dangerous weapon as defined in [Iowa Code section 708.13\(2\)](#). If so, then 40.0% of the FY 2012 convicted offenders were Black and 60.0% were White. There may be a minority impact associated with the new crime created in this Bill.
- The impact on minorities for the change to interference with official acts will remain consistent with current data.

Summary of Impacts

Correctional Impact

There will be an estimated 28 offenders annually convicted of a serious misdemeanor under this Bill that are convicted of a simple misdemeanor under current law for the crime of interference with official acts. Net admissions to the correctional system are indicated in the following table. Data in the table does not include the correctional impact of the new offense, removal of an officer's communication or control device.

Net Admissions to the Correctional System

	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>
County Jail	5	11	11	11	11
Probation	4	8	8	8	8
Total	9	19	19	19	19

The table above shows the net admissions — it does not reflect offenders admitted to the correctional system under current law (estimated to be five offenders annually). An estimated four offenders annually convicted of this serious misdemeanor will receive a sentence other than probation supervision by Community-Based Corrections (CBC) or county jail incarceration, such as a financial penalty and/or community service. The impact on the probation population is expected to be minimal, trending slightly upward over the five-year projection period because the length of stay under supervision exceeds one year.

To the extent that the new crime, removal of an officer's communication or control device, results in new convictions, the correctional impact is understated in this fiscal note.

Minority Impact

It is expected this Bill will have a disproportionate impact on minorities because approximately 34.2% of offenders convicted under the Bill's provisions related to interference with official acts may be minorities. Under current law, these simple misdemeanor offenders are not supervised in the corrections system. This Bill shifts simple misdemeanor convictions to serious

misdemeanor convictions. There will be a minimal increase (estimated to be four offenders annually) in the number of minority offenders supervised in the correctional system (either probation or county jail incarceration).

To the extent that the new crime, removal of an officer's communication or control device, results in new convictions, the minority impact may be understated in this fiscal note.

Fiscal Impact

The fiscal impact for the Bill's provisions related to interference with official acts is estimated to be an increased cost to the State General Fund of \$7,200 in FY 2014 and \$25,300 in FY 2015. County jail costs are estimated to increase by \$2,100 in FY 2014 and \$4,300 in FY 2015. The costs of the new offense, removal of an officer's communication or control device, cannot be estimated.

The table below shows the impact by areas within the criminal justice system for the Bill's provisions related to interference with official acts. Costs will continue to slowly increase in future fiscal years because the length of stay in the corrections system (probation) exceeds one year.

Fiscal Impact by Funding Source

	FY 2014			FY 2015		
	County Budgets	General Fund	Total	County Budgets	General Fund	Total
County Jail	\$ 2,100	\$ 0	\$ 2,100	\$ 4,300	\$ 0	\$ 4,300
CBC - Probation	0	2,600	2,600	0	16,000	16,000
Judicial Branch	0	2,500	2,500		5,100	5,100
Indigent Defense	0	2,100	2,100		4,200	4,200
Total	\$ 2,100	\$ 7,200	\$ 9,300	\$ 4,300	\$ 25,300	\$ 29,600

The fiscal impact to the judicial branch, indigent defense, and county budgets reflect the increased cost for serious misdemeanor cases, minus the costs for simple misdemeanor cases, for the Bill's provisions related to interference with official acts.

To the extent that the new crime, removal of an officer's communication or control device, results in new convictions, the fiscal impact is understated in this fiscal note.

Sources

Department of Human Rights, Criminal and Juvenile Justice Planning Division
 Department of Corrections
 Office of the State Public Defender
 State Court Administrator's Office

/s/ Holly M. Lyons

April 3, 2013

The fiscal note for this bill was prepared pursuant to [Joint Rule 17](#) and the Iowa Code. Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.

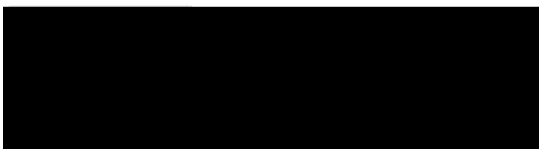
State Legislation Monitoring Report: FY2008

Iowa Department of Human Rights
Division of Criminal and Juvenile Justice Planning

Paul Stageberg, Ph.D., Administrator

Primary Authors:
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February, 2009




Introduction

The Division of Criminal and Juvenile Justice Planning issued its first state legislation monitoring report in February 2002, covering the first six months' impact of Senate File 543 (which enacted a number of sentencing changes) on the justice system; monitoring of the correctional impact of this bill was at the request of several members of the legislature. Since then, the Criminal and Juvenile Justice Planning Advisory Council has requested that CJJP monitor the correctional impact of enacted legislation of particular interest. This report covers monitoring results or future plans to monitor the following:

Drug commitments to prison, continuing evaluation of the impact of drug laws on the prison population. (See p.4).

Drug commitments to CBC, continuing evaluation of the impact of drug laws on the probation population. (See p.5).

Enticement of minors, internet offenses. (See p.5).

Baseline data for minority/gender differences in criminal charges/convictions. (See p.6). 

Juveniles, Sex Offender Registry, and the Adam Walsh Act. (See p.7).

Contraband in Jails. (See p.11).

Summary of Findings

Drug commitments. The number of new commitments to prison for drug offenses decreased again in FY2008, mainly due to a continuing decrease in the number of commitments for methamphetamine. This represented the 4th year in which drug offense commitments fell. However, there appears to have been a slight increase in the number of new commitments for marijuana and crack cocaine. Drug admissions to probation have also decreased since FY05.

Enticement of minors. Although there has not been a legislative change in the Iowa Code on enticing minors away, the Internet has changed the manner in which some teens and younger children can be put in danger. Because of interpretation of the current language, law enforcement officials are concerned that convictions for felony enticement rather than misdemeanor attempts will be more difficult. A three-year look at convictions shows an inconsistent pattern at this point.

Baseline Data, Minority/Gender. The 2008 Iowa Legislature passed legislation requiring minority impact statements to be a part of all proposed legislation dealing with the justice system. (There were other requirements that are not covered here.) Baseline data are provided as an example of what will be tracked and analyzed during future Legislative sessions.

Juveniles/Sex Offender Registry. Juveniles in Iowa appear to have a very low rate of re-offending for sex offenses. In addition, adjudication for sex offenses under current Iowa law has repercussions that will last for the lifetime of the juvenile, irrespective of future non-conviction for sex offenses. Even with the modifications to the requirements of the Adam Walsh Act concerning mandatory registration for juveniles, the impact would be significant.

Responses by the juvenile court system to the consequences of adjudication and registration for juveniles are not known at this time. Interpretation of 692A.2A for delinquent juveniles could mitigate or escalate the consequences for juveniles.

Possession of Contraband in a Correctional Facility. While there was an increase in the number of convictions between FY2007 and FY2008, the number is not large enough to have a significant impact on the correctional system.

Drug commitments to prisons

Monitoring Plan. Due to the significant impact of methamphetamine and other drugs in Iowa, CJP staff were directed to compile regular data on the impact of drugs on Iowa's prison population.

In 2005 the Legislature passed S.F. 169, restricting the availability of pseudoephedrine and other precursors to methamphetamine manufacturing. Previous analyses have demonstrated the effectiveness of that measure in reducing the number of clandestine labs found, as well as the number of convictions for possession of precursors.

Data have been collected from the Iowa Corrections Offender Network (ICON) on inmates admitted for drug offenses since the start of state FY2005. Data were collected on the type of drug involved in new commitments whose lead charge involved drugs.

	FY2005	FY2006	FY2007	FY2008
Amphetamine	9	2	2	1
Cocaine (powder)	64	86	74	68
Cocaine (crack)	85	95	139	144
LSD	1	1	1	0
Marijuana	171	208	192	201
Methamphetamine	697	573	448	343
Other	8	8	7	10
RX	12	14	17	27
Unknown	2	1	1	1
Total	1,049	988	882	795

The trend indicates that meth-related admissions continued to drop during FY08. The decrease in meth-related admissions has led to an overall decrease in the number of admissions for drug-related crimes, even though there appears now to be an increase in the number of convictions and admissions for crack cocaine, marijuana, and prescription drugs.

To put this information into some perspective, the table below shows that new admissions of inmates whose most serious crimes were drug-related dropped slightly in FY2005, the first such drop in ten years. It has continued to drop since then.

Offense	Fiscal Year							
	2001	2002	2003	2004	2005	2006	2007	2008
Drug	904	966	1,096	1,110	1,055	988	882	795
Order	106	146	155	132	142	153	197	159
OWI	302	262	284	261	242	311	264	271
Property	1,059	1,070	1,130	1,070	1,044	1,095	1,043	964
Sex	269	258	235	214	261	264	233	205
Traffic	67	90	109	112	120	125	102	96
Violent	536	562	629	515	609	611	583	621
Weapon	56	53	67	34	56	63	54	34
Unknown	1	0	0	0	1	0	0	0
Total	3,300	3,407	3,705	3,448	3,530	3,610	3,358	3,145

It is evident that this decrease is continued in FY08.

A similar pattern is shown among admissions to probation field supervision. The table below presents data by most serious offense type:

Admissions to Probation Field Supervision, by Offense Type

Offense Type	FY02	FY03	FY04	FY05	FY06	FY07	FY08	% Change
Drug	3,471	3,979	4,001	4,179	3,854	3,623	3,463	-0.2%
Other	61	56	100	94	112	93	136	123.0%
OWI	4,188	4,078	4,500	5,331	5,286	5,172	5,555	32.6%
Property	3,031	3,199	3,484	3,382	3,517	3,534	3,667	21.0%
Public Order	388	422	438	463	575	504	563	45.1%
Sex	214	213	217	209	165	202	180	-15.9%
Traffic	471	500	623	687	721	643	638	35.5%
Violent	2,175	2,319	2,160	2,207	2,314	2,411	2,414	11.0%
Weapons	144	183	162	178	194	160	167	16.0%
Total	14,143	14,949	15,685	16,730	16,738	16,342	16,783	18.7%

While it's not feasible at this time to identify the drug associated with drug-related probation admissions, it's clear that the pattern of decreases seen for prison drug admissions since FY05 is also found among probation field supervision admissions.

Enticement of Minors.

Issue. One of the emerging criminal justice issues is that of internet predators. There has been an increase in public awareness of the potential harm that these individuals could cause by contacting teens through chat rooms and social networking sites.

Iowa Code 710.10 deals with the concept of enticing away minors. One section, 710.10(1) is a C felony, enticing a minor less than 13 years of age, for sexual abuse or exploitation. The other two sections are D felonies and aggravated misdemeanors respectively.

Law enforcement officials have suggested that efforts to combat internet enticement have been hampered because of interpretations of the Code when decoys are used to arrange "meets" with identified adults masquerading as teens. Convictions for the felony offenses are harder to obtain.

Monitoring Plan. The Justice Data Warehouse was used to look at the number of convictions over a three-year span. Following are the number of convictions for the three levels of enticement for the past three fiscal years.

	FY2006	FY2007	FY2008
CFEL, <13	3	1	0
DFEL, Enticement	9	19	4
AGMS, Attempt	5	14	16
TOTAL	17	34	20

Impact. Although new legislation amending the definitions was not passed during the 2008 Legislative session, this issue was requested for monitoring as there are plans to continue exploring this area with the Legislature.

Baseline Data.

Issue. The 2008 session of the Iowa Legislature passed an act requiring the Legislative Services Bureau, with assistance from the Division of Criminal and Juvenile Justice Planning, to include an analysis of the impact of any legislation on minorities. In preparation for the 2009 session of the Legislature, CJJP created the following table to be used as a part of any analysis of proposed justice system legislation.

% Minorities for Charges, Convictions, and Prison Population, FY2008

*% Minority is based upon total offender count where the race is known, not the total offender count.

	Charges	Convictions	Prison Population
FELA			
Violent	42.2%	15.8%	27.5%
FELB			
Violent	34.6%	44.0%	29.3%
Drug	30.9%	34.3%	14.3%
Property	32.5%	37.9%	27.8%
Public Order	0.0%	100.0%	0.0%
Other	27.1%	29.4%	27.0%
FELC			
Violent	37.1%	38.6%	25.8%
Drug	40.2%	39.2%	35.6%
Property	26.2%	27.0%	36.7%
Public Order	24.2%	25.0%	20.0%
Other	21.1%	33.3%	8.3%
FELD			
Violent	33.4%	35.1%	26.9%
Drug	30.8%	29.4%	31.0%
Property	25.9%	25.5%	20.8%
Public Order	26.0%	28.2%	22.1%
Other	43.5%	50.0%	15.0%
AGMS			
Violent	32.7%	33.6%	28.6%
Drug	25.7%	28.5%	17.9%
Property	25.5%	28.7%	23.3%
Public Order	24.3%	23.3%	20.3%
Other	7.8%	7.4%	25.0%
SRMS			
Violent	30.5%	32.3%	5.6%
Drug	22.3%	23.6%	0.0%
Property	23.8%	24.8%	
Public Order	18.1%	16.8%	
Other	22.3%	18.8%	

Below is another way of looking at disparity, using ratios to determine relative risk for minorities for certain events that occur in the justice system. A ratio of 1 would indicate that the risk is identical between the two groups.

Adult Ratios between Minorities and Caucasians, selected Events

	2003	2004	2005	2006	2007
Ratio of minority rate to Caucasian rate					
Arrests	2.1	2.1	2.2	2.2	3.4
Case filings	2.8	2.9	3.2	3.4	5.4
Disposed charges	3.1	3.1	3.4	3.4	5.2
Deferred judgments	NA	NA	NA	0.79	0.92
Guilty	NA	NA	NA	1	0.79

NOTE: Deferred judgments prior to 2006 would be understated as records are expunged, and guilty counts would be over-represented. Therefore, calculations have not been made for those years.

Impact. It is clear that disparity exists within the system. These, and other data, will be used to respond to legislative requests for analysis, as well as monitoring any impact that other initiatives may have on the system.

Juveniles and the Sex Offender Registry, Residency Restrictions.

Issue. As a part of the on-going evaluation of Iowa’s sex offender registry and residency restrictions, the Division of Criminal and Juvenile Justice Planning, Department of Human Rights evaluated the impact of those policies on juveniles who have been adjudicated of sex offenses during the past six years. The analysis also extends to what the effect of the implementation of the Adam Walsh act may have on juvenile offenders in the future.

Background. Iowa requires sex offenders to register for an initial period of 10 years. All sex offenses are included in the list of offenses that would require registration; although risk of recidivism is included on the Sex Offender Registry (SOR), Iowa law currently requires no assessment of risk to determine the need for registration. Iowa also restricts where sex offenders can live to outside 2,000 feet of the real property of a public or private elementary or secondary school or a child care facility. The residency restriction has no time limit. The Code states that individuals who “commit a criminal offense” against a minor is covered by the residency restriction [IA Code 692A.2A(1)]. Once convicted of a sex offense involving a minor victim, an individual would be subject to the residency restriction for life, irrespective of registration requirements.

Currently, juveniles are not required to be placed automatically on the SOR. Practices

may vary among the eight Judicial Districts, with offenders either placed on the SOR automatically with the possibility of removal after successful completion of probation/treatment, or placed on the SOR after supervision and evaluation determines that such registration should occur.

Current application of 692A.2A does not require juveniles adjudicated delinquent for a sex offense to live 2,000 feet from a school or child care facility. However, once they have reached the age of 18 and are no longer enrolled in secondary school, the restriction is deemed to apply for the rest of their lives.

In the legislative session in 2005, the Iowa General Assembly passed a number of changes to the Code sections dealing with sex offenders. These changes included increased penalties for adult offenders on selected offenses, requiring electronic monitoring of sex offenders, and 10-year or lifetime supervision for adult offenders convicted of sex offenses. At approximately the same time, the Courts ruled that the residency restrictions were allowable under the Iowa Constitution and could therefore be implemented.

Monitoring Plan. Two cohorts of juveniles were used: juveniles adjudicated for sex offenses during the state fiscal years of FY2003 through FY2005 (July 1, 2002 through June 30, 2005) and juveniles adjudicated for sex offenses during the state fiscal years of FY2006 through FY2008 (July 1, 2005 through June 30, 2008). These two groups were selected as representing equal time periods prior to and after the Code changes and implementation of the residency restrictions. Data were obtained from the Iowa Court Information System, Justice Data Warehouse.

Names of individuals on the SOR as of June 30, 2008 who were under 22 years of age were provided by the Department of Public Safety. This list was used to determine if offenders previously adjudicated as juveniles were currently on the Registry.

In addition, recidivism was investigated for the earlier cohort of juveniles who are currently on the Registry to determine general rates of recidivism and recidivism for sex offenses. It is assumed that individuals who are not currently on the Registry but were adjudicated as juveniles for sex offenses have not committed a subsequent sex offense. The second cohort was not investigated for recidivism because many of these individuals would still be juveniles or would not have had sufficient time elapse to gather meaningful information. Recidivism information was obtained from Iowa Courts Online.

Impact. During the 3-year period FY03-FY05, there were 350 juveniles adjudicated for sex offenses in Iowa. Of these, 47 were on the SOR as of June 30, 2008. During the 3-year period FY06-FY08, there were 312 juveniles adjudicated for sex offenses, with 27 of these on the SOR.

Juvenile Sex Offenders, Registration

	# Adjudicated	# on SOR	% on SOR
FY03-05	350	47	13.4%
FY06-08	312	27	8.6%
Total	662	74	11.1%

Of the 662 juveniles adjudicated for sex offenses from both cohorts, 588 have not been placed on the SOR at this time, neither as a consequence of their original adjudication nor for any subsequent sexual offense.

The number of juveniles adjudicated for sex offenses is smaller during the second cohort period than the first period. There have been anecdotal reports that juvenile courts are reluctant to adjudicate juveniles delinquent for sex offenses because of the long-term consequences. A further discussion of this point can be found in the Discussion section of this report.

As stated earlier, the first cohort of 350 juveniles was assessed for subsequent offenses. Eleven (3.1%) either had another adjudication for a sex offense during one of the two time periods, or had a consent decree revoked. These individuals were still minors at the time of the subsequent adjudication. It is unclear from the data source whether any of these constituted “new” offenses, or were part of the original juvenile complaint, so these are not included in the recidivism counts below. Ten of these individuals were not on the SOR as of June 30, 2008, so had not had a new offense as adults.

Of the FY03-FY05 cohort, 47 were on the SOR as of June 30. These registrants were evaluated for subsequent offenses, assuming that many of them would be adults at the time of the study and would have had three to six years to re-offend. Of the 47, 20 had no subsequent criminal cases filed against them. Another seven individuals had either failure to register or residency violations (public order offenses), but no other criminal offenses. Fourteen of the 47 had non-sex offense convictions in a variety of offense types, including theft, drug and/or alcohol, and assault. Six of the 47 had new sex offense charges; two of these had not been disposed as of this report.

Recidivism, FY03-FY05 Cohort on Registry

	#	%
No charges/convictions	20	42.5%
Public order only	7	14.8%
Other criminal	14	29.7%
Sex offense charges/convictions	6	12.7%
Total	47	100%*

* May not equal 100% due to rounding.

While the sex offense recidivism rate for those on the SOR is 12.7%, overall only the six identified above have been either charged or convicted of new sex offenses as adults, a sex offense recidivism rate for the FY03-FY05 cohort of 1.7% (6 out of 350).

Discussion. Research has suggested that juvenile sex offenders are more amenable to treatment than adults and pose a lower risk of re-offending. This appears to be borne out by these preliminary numbers as the overall recidivism rate is small. In addition, over three-fourths of the juveniles in the first cohort who are on the registry have not had a new sexual offense charge or conviction at the time of this report. However, according to current practice, 662 juveniles (both cohorts) who have been adjudicated for sex offenses cannot lawfully live within 2000 feet of a school or daycare center for the rest of their

lives. There may be a few of these juveniles whose offense may not have involved minor victims, but that number is not known at this time.

The Federal “Adam Walsh” Act expands Iowa’s current requirements for juvenile sex offenders. In that legislation, certain juveniles will be required to register without regard to juvenile court discretion. Mandatory registration would be required for any juvenile who was 14 or older at the time of the offense, if the offense included force or incapacitation. These offenses, in Iowa Code, include some definitions of Sex Abuse 2nd and Sex Abuse 3rd (709.3 and 709.4 respectively).

There are also definitions within those Iowa Code sections that may not be subject to the Adam Walsh requirements. However, at this time the database does not distinguish among the sub-definitions. So the following data should be considered high-end estimates, rather than true estimates, of the potential impact on juveniles.

Potential Number of SOR Registrants under Adam Walsh

	Total # Adjudicated	# Meeting Fed. Criteria	%
FY03-FY05	350	193	55.1%
FY06-FY08	312	179	57.3%

Iowa Code 709.3, Sex Abuse 2nd, is also used if the victim is under 12 years of age. Iowa Code 709.4, Sex Abuse 3rd, includes victim age as part its definition as well. As juveniles tend to be sexually involved with peers, it has been suggested that this leads to the use of 709.3 or 709.4 for that reason, not because force was used. However, one of the changes in Iowa Code that occurred at the beginning of FY06 was the ability to charge juveniles with Lascivious Acts with a Child rather than Sex Abuse 2nd or 3rd. If that change allowed for more “accurate” charging and adjudication, then one would expect a drop in the number of juveniles adjudicated for Sex Abuse 2nd and 3rd. While the overall number of juveniles adjudicated was lower, there was an increase in the percentage of juveniles convicted of the offenses requiring registration in the second cohort.

Based upon the data available at this time, it would seem that any changes to the methodology for placing juveniles on the SOR would have significant negative effects on the future ability of juveniles to establish stable life styles. With the overall recidivism for sex offenses as low as 2% for juveniles, lifetime registration does not appear to be justified.

In addition, the current practice requiring lifetime residency restrictions upon turning 18 for all juvenile offenders does not appear to be supported by the data.

Given the potential negative impact of required registration and residency restrictions, another concern is that the juvenile system may respond by not using sex offense codes in alleging and adjudicating delinquent behaviors even when appropriate. While this could be seen as solving one problem, it would create another by restricting access to sex offender treatment. There has been anecdotal evidence suggesting that juveniles increasingly are not being adjudicated for sex offenses, an approach providing one explanation for the decrease seen from FY03-FY05 to FY06-FY08. There was a 10% reduction in the number of juveniles adjudicated for sex offenses between the two

cohorts, and a 42.5% reduction in the number of juveniles on the SOR.

During the same time periods, there was a 4.9% reduction overall (from 17,056 to 16,209) in the number of juveniles adjudicated for any offense. At this time, it would be difficult to determine the underlying causes of the reductions specific to sex offenses in light of the overall reduction in juvenile adjudications.

Contraband.

Issue. The definition for possession of contraband in a correctional facility was expanded in FY2008 to include city and county jails. It was anticipated that there could be a significant increase in the number of charges and convictions, with a resulting increase in the number of days in jail or prison.

Monitoring Plan. The Justice Data Warehouse was used to look at changes in the number of convictions for the 2 years prior to the change in definition, and FY2008, the first year of implementation.

	FY2006	FY2007	FY2008
CFEL, weapon	0	1	1
DFEL, contraband	9	8	17
TOTAL	9	9	18

Impact. While the numbers indicate an increase in convictions, at this time there does not appear to be such a large increase that there would be a significant impact on the correctional system.

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Racial
5 and Ethnic Impact Research Task Force Act.

6 Section 5. Purpose. The purpose of this Act is to determine
7 a practical method for the standardized collection and analysis
8 of data on the racial and ethnic identity of arrestees by State
9 and local law enforcement agencies. The method shall be usable
10 not only for the collection and analysis of data on the racial
11 and ethnic identity of arrestees under current law, but also in
12 predicting the likely racial and ethnic identity of arrestees
13 under proposed changes to the Criminal Code of 1961, the Code
14 of Criminal Procedure of 1963, and the Unified Code of
15 Corrections.

16 Section 10. Racial and Ethnic Impact Research Task Force.
17 There is created the Racial and Ethnic Impact Research Task
18 Force, composed of the following members:

19 (1) Two members of the Senate appointed by the Senate
20 President, one of whom the President shall designate to
21 serve as co-chair, and 2 members of the Senate appointed by
22 the Minority Leader of the Senate.

1 (2) Two members of the House of Representatives
2 appointed by the Speaker of the House of Representatives,
3 one of whom the Speaker shall designate to serve as
4 co-chair, and 2 members of the House of Representatives
5 appointed by the Minority Leader of the House of
6 Representatives.

7 (3) The following persons or their designees:

8 (A) the Attorney General,

9 (B) the Chief Judge of the Circuit Court of Cook
10 County,

11 (C) the Director of State Police,

12 (D) the Superintendent of the Chicago Police
13 Department,

14 (E) the Sheriff of Cook County,

15 (F) the State Appellate Defender,

16 (G) the Cook County Public Defender,

17 (H) the Director of the Office of the State's
18 Attorneys Appellate Prosecutor,

19 (I) the Cook County State's Attorney,

20 (J) the Executive Director of the Illinois
21 Criminal Justice Information Authority,

22 (K) the Director of Corrections,

23 (L) the Director of Juvenile Justice, and

24 (M) the Executive Director of the Illinois
25 African-American Family Commission.

26 (4) The co-chairs may name up to 8 persons,

1 representing minority communities within Illinois, groups
2 involved in the improvement of the administration of
3 justice, behavioral health, criminal justice, law
4 enforcement, and the rehabilitation of former inmates,
5 community groups, and other interested parties.

6 Section 15. Compensation; support. The members of the Task
7 Force shall serve without compensation, but may be reimbursed
8 for reasonable expenses incurred as a result of their duties as
9 members of the Task Force from funds appropriated by the
10 General Assembly for that purpose. The Center for Excellence in
11 Criminal Justice at the Great Lakes Addiction Technology
12 Transfer Center at Jane Addams College of Social Work at the
13 University of Illinois at Chicago shall provide staff and
14 administrative support services to the Task Force.

15 Section 20. Meetings; report. The Task Force shall hold
16 one or more public hearings, at which public testimony shall be
17 heard. The Task Force shall report its findings and
18 recommendations to the General Assembly on or before July 1,
19 2012. The recommendations shall include, but are not limited
20 to:

21 (1) identifying a practical method for the
22 standardized collection and analysis of data on the racial
23 and ethnic identity of arrestees by State and local law
24 enforcement agencies; and

1 (2) providing proposed legislation, drafted with the
2 assistance of the Legislative Reference Bureau, and using
3 the identified practical method for the standardized
4 collection and analysis of data on the racial and ethnic
5 identity of arrestees by State and local law enforcement
6 agencies, to create a Racial and Ethnic Impact Statement
7 providing an analysis of the likely racial and ethnic
8 identity of arrestees under proposed changes to the
9 Criminal Code of 1961, the Code of Criminal Procedure of
10 1963, and the Unified Code of Corrections.

11 Section 99. Effective date. This Act takes effect upon
12 becoming law.

SENATE BILL 679

P5, E1, E2

2lr2983
CF 2lr1606

By: **Senator Forehand**

Introduced and read first time: February 3, 2012

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **General Assembly – Fiscal Notes – Criminal Justice Policy Impact Statements**

3 FOR the purpose of requiring a fiscal note for a bill to include a criminal justice policy
4 impact statement under certain circumstances; requiring the criminal justice
5 policy impact statement to contain certain information; requiring the
6 Department of Legislative Services to prepare the criminal justice policy impact
7 statement by requesting certain information from certain entities; prohibiting
8 certain entities from being required to prepare certain information for inclusion
9 in the criminal justice policy impact statement; and generally relating to
10 criminal justice policy impact statements in fiscal notes.

11 BY repealing and reenacting, with amendments,
12 Article – State Government
13 Section 2–1505(e)
14 Annotated Code of Maryland
15 (2009 Replacement Volume and 2011 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article – State Government**

19 2–1505.

20 (e) (1) A fiscal note for a bill shall contain an estimate of the fiscal impact
21 of the bill on the revenues and expenditures of the State government and of local
22 governments:

23 (i) during the year in which the bill is to become effective and
24 the next 4 years after that year; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (ii) if the full fiscal impact of a bill is not expected to occur
2 during those years, during each year until and the first year during which that impact
3 is expected to occur.

4 (2) If a bill, as introduced or amended, imposes a mandate on a local
5 government unit, the fiscal note for the bill shall contain:

6 (i) a statement that clearly identifies the imposition of the
7 mandate; and

8 (ii) an estimate of the fiscal impact of the mandate and, if
9 applicable and if data is available, the effect on local property tax rates.

10 (3) If a bill, as introduced or amended, requires a mandated
11 appropriation, the fiscal note for the bill shall contain:

12 (i) a statement that clearly identifies the imposition of the
13 mandated appropriation; and

14 (ii) an estimate of the fiscal impact of the mandated
15 appropriation.

16 (4) (I) A FISCAL NOTE FOR A BILL SHALL INCLUDE A CRIMINAL
17 JUSTICE POLICY IMPACT STATEMENT IF THE BILL, AS INTRODUCED OR
18 AMENDED, DOES THE FOLLOWING:

19 1. CREATES A CRIMINAL OFFENSE;

20 2. SIGNIFICANTLY ALTERS THE ELEMENTS OF AN
21 EXISTING CRIMINAL OFFENSE;

22 3. ALTERS THE PENALTIES APPLICABLE TO A
23 CRIMINAL OFFENSE; OR

24 4. ALTERS EXISTING SENTENCING, PAROLE, OR
25 PROBATION PROCEDURES.

26 (II) THE CRIMINAL JUSTICE POLICY IMPACT STATEMENT
27 REQUIRED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL INCLUDE, TO
28 THE EXTENT THE INFORMATION IS AVAILABLE, THE FOLLOWING:

29 1. AN ESTIMATE OF THE NUMBER OF CRIMINAL
30 CASES THAT WOULD BE AFFECTED BY THE BILL DURING THE YEAR IN WHICH
31 THE BILL IS TO BECOME EFFECTIVE AND ANY ESTIMATES AVAILABLE FOR THE
32 FOLLOWING YEARS;

1 2. AN ESTIMATE OF THE FISCAL IMPACT OF
2 DETAINING, IMPRISONING, OR IMPOSING OTHER PENALTIES ON INDIVIDUALS IN
3 ACCORDANCE WITH THE PROVISIONS OF THE BILL DURING THE YEAR IN WHICH
4 THE BILL IS TO BECOME EFFECTIVE AND ANY ESTIMATES AVAILABLE FOR THE
5 FOLLOWING YEARS;

6 3. THE POTENTIAL IMPACT OF THE BILL ON RACIAL
7 AND ETHNIC GROUPS;

8 4. THE POTENTIAL IMPACT OF THE BILL ON
9 EXISTING STATE OR COUNTY DETENTION FACILITIES, CORRECTIONAL
10 FACILITIES, OR OTHER PROGRAMS USED FOR SENTENCING;

11 5. WHETHER THE BILL IS LIKELY TO CREATE A NEED
12 FOR ADDITIONAL DETENTION OR CORRECTION FACILITIES OR JUVENILE
13 PLACEMENT SERVICES;

14 6. THE ESTIMATE OF THE FISCAL IMPACT
15 ASSOCIATED WITH THE NEED FOR ADDITIONAL JUDICIAL RESOURCES FOR
16 LEGAL REPRESENTATION AND COURT SERVICES DURING THE YEAR IN WHICH
17 THE BILL IS TO BECOME EFFECTIVE AND ANY ESTIMATES AVAILABLE FOR THE
18 FOLLOWING YEARS.

19 (III) THE DEPARTMENT OF LEGISLATIVE SERVICES SHALL
20 PREPARE THE CRIMINAL JUSTICE POLICY IMPACT STATEMENT BY REQUESTING
21 AVAILABLE INFORMATION FROM THE FOLLOWING:

- 22 1. THE DEPARTMENT OF JUVENILE SERVICES;
- 23 2. THE DEPARTMENT OF PUBLIC SAFETY AND
24 CORRECTIONAL SERVICES;
- 25 3. THE JUDICIARY; AND
- 26 4. ANY OTHER STATE, COUNTY, OR LOCAL ENTITY
27 THAT THE DEPARTMENT OF LEGISLATIVE SERVICES DEEMS NECESSARY.

28 (IV) THE DEPARTMENT OF LEGISLATIVE SERVICES OR ANY
29 OTHER STATE, COUNTY, OR LOCAL ENTITY MAY NOT BE REQUIRED TO PREPARE
30 INFORMATION THAT IS NOT READILY AVAILABLE FOR INCLUSION IN THE
31 CRIMINAL JUSTICE POLICY IMPACT STATEMENT.

SENATE BILL 679

1 **[(4)] (5)** A fiscal note shall identify the sources of the information
2 that the Department used in preparing the estimates of fiscal impact.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2012.

**Racial Impact for H.F. 306:
Juvenile Certification & EJJ - Age Lowered**
Minnesota Sentencing Guidelines Commission
February 4, 2011

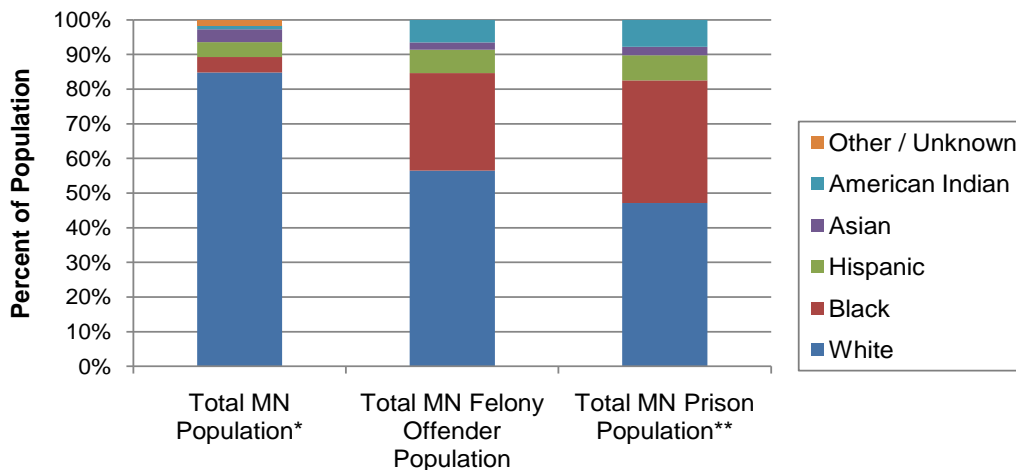
By providing the following information on race, MSGC seeks to enrich the discussion on how minorities in Minnesota are affected by changes in sentencing policy. If a significant racial disparity can be predicted before a bill is passed, it may be possible to consider alternatives that enhance public safety without creating additional disparity in Minnesota’s criminal justice system. Just as with the Commission’s fiscal impact notes, the agency does not intend to comment on whether or not a particular bill should be enacted. Rather, it is setting out facts that may be useful to the Legislature, whose members frequently express concerns about the disparity between the number of minorities in our population and the number in our prisons.

According to the U.S. Census population estimates for 2009 (the most current estimates available at this time), approximately 85 percent of Minnesota’s population is white. The composition of the remaining 15 percent is as follows: 4.5 percent black; 4.3 percent Hispanic; 3.7 percent Asian; 1.1 percent American Indian; and roughly 1.5 percent who identify themselves with two or more races.

In contrast, MSGC monitoring data shows the following racial make-up of the 2009 felony offender population: 56.5 percent white; 28.1 percent black; 6.5 percent American Indian; 6.8 percent Hispanic; and 2.1 percent Asian.

According to the Minnesota Department of Corrections, the racial composition of the prisons on July 1, 2009 was as follows: 47.1 percent white; 35.4 percent black; 7.8 percent American Indian; 7.3 percent Hispanic; and 2.4 percent Asian.

**Comparison of Racial Composition Among Populations:
2009**



* Source for “Total MN Population”: [U.S. Census Bureau 2009 Population Estimates.](#)

** Source for “Total MN Prison Population”: [MN Department of Corrections Adult Inmate Profile: 7/1/09.](#)

The provisions of H.F. 306 could increase racial disparity in prison populations, due to a higher percentage of minority offenders sentenced for the offenses included in the definition of "violent juvenile offense." From 2001-09, there were 12 offenders who were 14 years old at the time of offense who were sentenced in adult court for one of the specified violent juvenile offenses. Of those, three offenders were white (25.0%), four were black (33.3%), four were American Indian (33.3%), and one was Hispanic (8.3%). Two of these offenders initially received stayed sentences, but were eventually revoked and sentenced to prison. Therefore, all 12 offenders ended up in the prison population.

Assuming similar racial percentages applied to the estimated prison bed impact of H.F. 306, this would mean a higher percentage of American Indian offenders would receive prison sentences, compared with the 2009 prison population.

Jetzer, Keri-Anne (OFM)

From: Payne, Jill (MSGC) <Jill.Payne@state.mn.us>
Sent: Wednesday, April 24, 2013 11:22 AM
To: Jetzer, Keri-Anne (OFM)
Cc: Mitchell, Kelly (MSGC)
Subject: Racial Impact Notes from MN Sentencing Guidelines Commission
Attachments: HF1665_RacialImpactNote.pdf; 2011MN HF 306 Racial Impact Note.pdf; HF285_MN Sentencing Guidelines Comm Racial Impact Statement.pdf

Keri-Anne,

Nice talking to you today. It's always interesting to compare notes with researchers from other states. Please feel free to contact us again. Also, please keep us informed about Washington's decision on racial impact statements.

In 2006, Minnesota's Commission began providing the Minnesota Legislature racial-impact notes on proposed crime bills when a disparate impact was anticipated. When MSGC staff identifies a disparate racial impact in the course of preparing a required fiscal impact statement, it sends a racial-impact note to the chairs of the public safety and judiciary committees. This is done separately from the required fiscal-impact statements.

I've attached some racial impact notes that we have provided the MN Legislature with explanation below. Our fiscal impact statements are available on-line at: http://www.mmb.state.mn.us/cgi-bin/fnts_session.pl

For the current session (2013-2014), one racial impact statement has been prepared so far:

1. House File 285, amends the definition of "crime of violence." The expansion of the list of crimes of violence may increase the racial disparity in Minnesota's prison population because a disproportionate number of adult felony offenders sentenced for convictions of felony assault in the fifth degree, felony domestic assault, domestic assault by strangulation, and juveniles not to possess firearms, are black or American Indian as compared to the overall felony population. This bill received a second reading on 4/8/2013.

For the 2011-12 Legislative Session, two racial impact notes were prepared:

1. House File 306, proposed a new offense category for "violent juvenile offense," and provided that a child who had allegedly committed a "violent juvenile offense" could be designated for extended jurisdiction juvenile prosecution regardless of age, and could be certified as an adult offender at ten years of age or older. Commission staff determined that this bill could increase racial disparity, resulting in a higher percentage of American Indian offenders receiving prison sentences. The bill was not enacted.
2. House File 1665, proposed to amend the list of offenses defined as crimes of violence in Minn. Stat. § 624.712. The expansion of this list would have increased racial disparity in Minnesota's prison population because a disproportionate number of offenders sentenced to felony fifth-degree assault, felony domestic assault, and domestic assault by strangulation are black as compared to the overall felony population in Minnesota. This bill was not enacted.

Thank you.

Jill Payne, Sr. Research Analyst
Minnesota Sentencing Guidelines Commission
309 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155

(651) 757-1725

(651) 297-5757 (fax)

**Racial Impact Note for H.F. 1665:
Expansion of List of Crimes of Violence
Minnesota Sentencing Guidelines Commission
February 22, 2012**

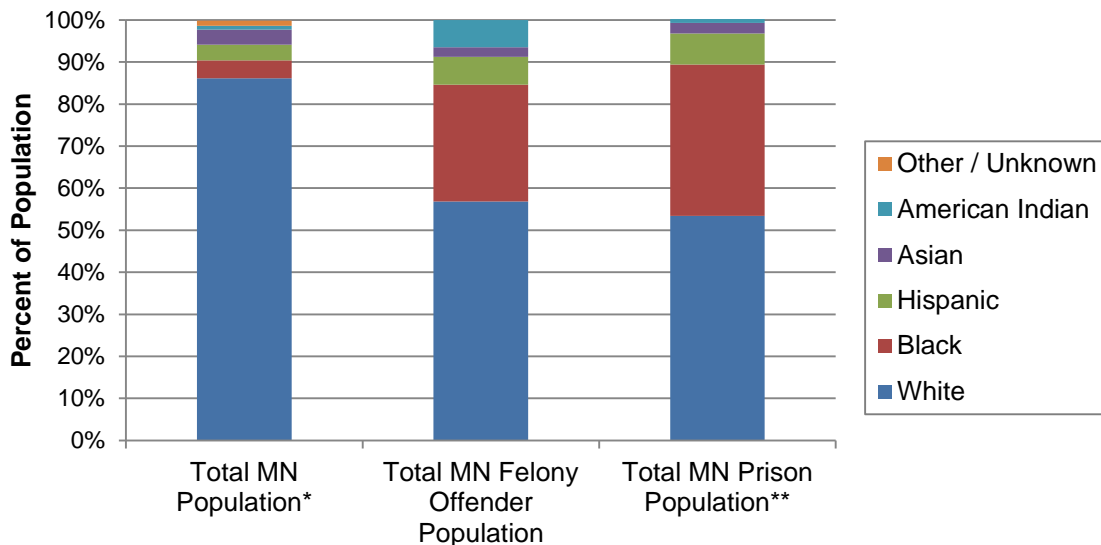
By providing the following information on race, MSGC seeks to enrich the discussion on how minorities in Minnesota are affected by changes in sentencing policy. If a significant racial disparity can be predicted before a bill is passed, it may be possible to consider alternatives that enhance public safety without creating additional disparity in Minnesota’s criminal justice system. Just as with the Commission’s fiscal impact notes, the agency does not intend to comment on whether or not a particular bill should be enacted. Rather, it is setting out facts that may be useful to the Legislature, whose members frequently express concerns about the disparity between the number of minorities in our population and the number in our prisons.

According to the U.S. Census population estimates for 2010, approximately 86.1 percent of Minnesota’s population is white. The composition of the remaining 13.9 percent is as follows: 4.3 percent black; 3.7 percent Hispanic; 3.6 percent Asian; 1.0 percent American Indian; and roughly 1.2 percent who identify themselves with two or more races, another race, or as Pacific Islander.

In contrast, MSGC monitoring data shows the following racial make-up of the 2010 felony offender population: 56.8 percent white; 27.8 percent black; 6.5 percent American Indian; 6.6 percent Hispanic; and 2.3 percent Asian.

According to the Minnesota Department of Corrections, the racial composition of the prisons on July 1, 2010 was as follows: 53.4 percent white; 36.0 percent black; 8.1 percent American Indian; 7.4 percent Hispanic; and 2.5 percent Asian.

**Comparison of Racial Composition Among Populations:
2010**



* Source for “Total MN Population 18 years and older”: [U.S. Census Bureau, Census Summary File 1, Table P11.](#)

** Source for “Total MN Prison Population”: [MN Department of Corrections Adult Inmate Profile: 7/1/10.](#)

Bill Description

This bill amends the list of offenses defined as crimes of violence in Minn. Stat. § 624.712. A person who had been convicted of committing a crime of violence is prohibited from possession of firearms under Minn. Stat. § 609.165 or Minn. Stat. § 624.713, subd. 1(2). The offenses added are felony convictions for: fifth-degree assault under Minn. Stat. § 609.224; domestic assault under Minn. Stat. § 609.2242; and domestic assault by strangulation under Minn. Stat. § 609.2247.

The effective date is August 1, 2012, and applies to crimes committed on or after that date.

Racial Disparity Impact

The expansion of the list of crimes of violence as presented in H.F. 1665, may increase racial disparity in Minnesota's prison population because a disproportionate number of offenders sentenced to felony fifth-degree assault, felony domestic assault, and domestic assault by strangulation are black as compared to the overall felony population in Minnesota. Of the offenders sentenced in 2010 for the offenses added to the list of crimes of violence, 43 percent were white and 39 percent were black. This is compared to the overall racial make-up of the 2010 felony offender population, which is 56.8 percent white and 27.8 percent black.

**Racial Impact Note for H.F. 285:
Expansion of List of Crimes of Violence
Minnesota Sentencing Guidelines Commission
February 15, 2013**

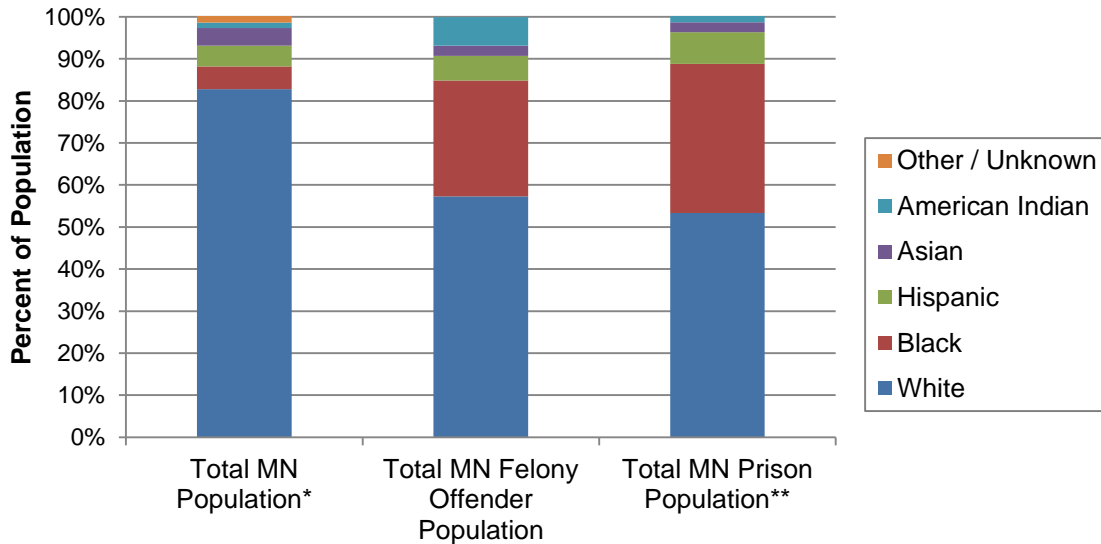
By providing the following information on race, MSGC seeks to enrich the discussion on how minorities in Minnesota are affected by changes in sentencing policy. If a significant racial disparity can be predicted before a bill is passed, it may be possible to consider alternatives that enhance public safety without creating additional disparity in Minnesota’s criminal justice system. Just as with the Commission’s fiscal impact notes, the agency does not intend to comment on whether or not a particular bill should be enacted. Rather, it is setting out facts that may be useful to the Legislature, whose members frequently express concerns about the disparity between the number of minorities in our population and the number in our prisons.

According to the U.S. Census population estimates for 2011, approximately 82.8 percent of Minnesota’s population is white. The composition of the remaining 17.2 percent is as follows: 5.4 percent black; 4.9 percent Hispanic; 4.2 percent Asian; 1.3 percent American Indian; and roughly 2.3 percent who identify themselves with two or more races, another race, or as Pacific Islander (Figure 1).

In contrast, MSGC monitoring data shows the following racial make-up of the 2011 felony offender population: 57.3 percent white; 27.5 percent black; 6.8 percent American Indian; 5.9 percent Hispanic; and 2.4 percent Asian (Figure 1).

According to the Minnesota Department of Corrections, the racial composition of the prisons on July 1, 2011 was as follows: 53.3 percent white; 35.5 percent black; 8.8 percent American Indian; 7.5 percent Hispanic; and 2.4 percent Asian (Figure 1).

Figure 1. Comparison of Racial Composition Among Populations: 2011



* Source for “Total MN Population 18 years and older”: [U.S. Census Bureau, Census Summary File 1, Table P11.](#)

** Source for “Total MN Prison Population”: [MN Department of Corrections Adult Inmate Profile: 7/1/11.](#)

Bill Description

This bill amends the list of offenses defined as crimes of violence in Minn. Stat. § 624.712, subd. 5. A person who had been convicted of committing a crime of violence is prohibited from possession of firearms under Minn. Stat. § 609.165 or Minn. Stat. § 624.713, subd. 1(2). The bill would add the following offenses to the definition of crime of violence: felony assault in the fifth degree under Minn. Stat. § 609.224, subd. 4; felony domestic assault under Minn. Stat. § 609.2242, subd. 4; domestic assault by strangulation under Minn. Stat. § 609.2247; and juveniles not to possess firearms under Minn. Stat. § 624.713, subd. 1(1).

The bill adds language to certain persons (felons and juveniles) not to possess firearms, Stat. § 624.713, subd. 1, that prohibits possession of ammunition as well as firearms. The ban on possession of ammunition applies to persons prohibited from possession of firearms in clauses (1) through (11) of Stat. § 624.713, subd. 1.

The bill also adds an aiding and abetting provision to certain persons (felons and juveniles) not to possess firearms under Minn. Stat. § 624.713, making a person criminally liable for a violation committed by another person under this section if the person aids or abets the violation within the meaning given in Minn. Stat. § 609.05.

Racial Disparity Impact

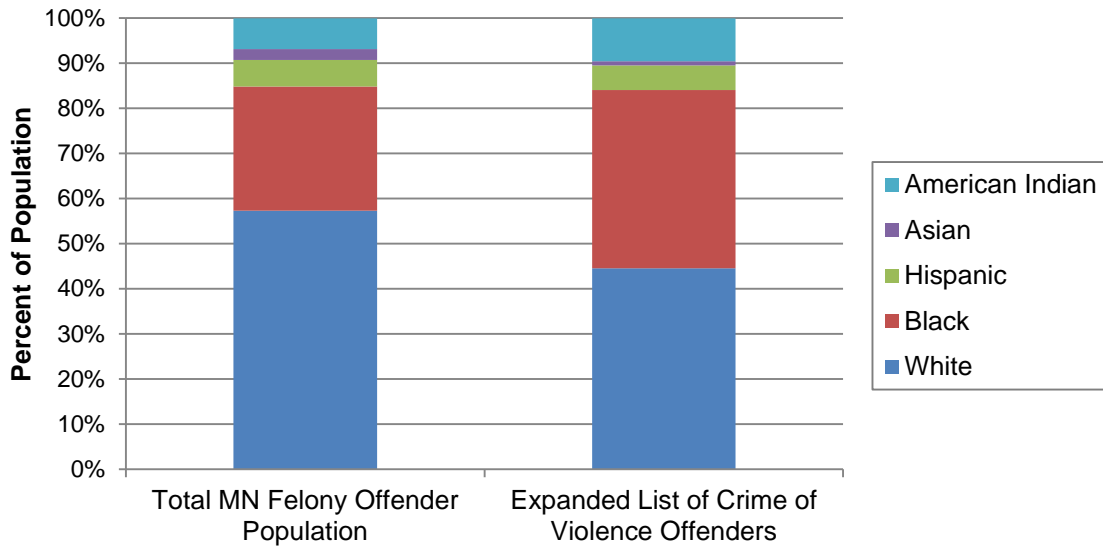
Of the offenders sentenced in 2011 for the offenses that would be added to the list of crimes of violence under this bill, 44.5 percent were white, 39.5 percent were black, and 9.5 percent were American Indian. This is compared to the overall racial make-up of the 2011 felony offender population, which is: 57.3 percent white, 27.5 percent black, and 6.8 percent American Indian (Figure 2).

Information from the State Court Administrator's Office indicates that over the last four years, an average of 40 juveniles per year were adjudicated delinquent for possession of a firearm under Minn. Stat. § 624.713, subd. 1(1). Of those juveniles adjudicated, 8.2 percent were white and 67.7 percent were black. The other non-black minorities make up 20.3 percent.¹

The Sentencing Guidelines Commission reported in a fiscal note for House File 285 - Firearm, Lawful Possession Modified, that this bill, as introduced, could result in the need for an additional 9 to 34 prison beds per year. The expansion of the list of crimes of violence may increase the racial disparity in Minnesota's prison population because a disproportionate number of adult felony offenders sentenced for convictions of felony assault in the fifth degree, felony domestic assault, domestic assault by strangulation, and juveniles not to possess firearms, are black or American Indian as compared to the overall felony population.

¹ Combined cases for reporting purposes: Hispanic, Asian, American Indian, juveniles who identified with two or more races, another race, or as Pacific Islander. Additionally, in roughly 4% of the cases, the data were missing or the juvenile did not disclose his or her race.

Figure 2. Total MN Felony Offenders vs. Expanded List of Crime of Violence Offenders: 2011



A-Engrossed
House Bill 2352

Ordered by the House May 19
Including House Amendments dated May 19

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Judiciary)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Requires preparation of racial and ethnic impact statement when legislation or state measure may affect racial composition of criminal offender population and when State Board of Parole and Post-Prison Supervision considers rules pertaining to parole or post-prison supervision. **Requires statement to describe effect legislation or rule may have on victims of crime who are members of racial and ethnic groups.**

Requires inclusion of statement in voters' pamphlet and on ballot.

A BILL FOR AN ACT

1
2 Relating to composition of criminal offender population; creating new provisions; and amending ORS
3 137.656 and 251.185.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. (1) A racial and ethnic impact statement must be prepared for any legis-**
6 **lation that may, if enacted, affect the racial and ethnic composition of the criminal offender**
7 **population. The statement must include a description of the effect the legislation may have**
8 **on victims of crime who are members of racial and ethnic groups for which data are avail-**
9 **able.**

10 **(2) Before a legislative committee hearing on legislation that may, if enacted, affect the**
11 **racial and ethnic composition of the criminal offender population, the committee shall submit**
12 **a written request to the Oregon Criminal Justice Commission to prepare and submit to the**
13 **committee a racial and ethnic impact statement described in ORS 137.656.**

14 **(3) As used in this section, "criminal offender population" means all persons who are**
15 **convicted of a crime or adjudicated for an act that, if committed by a person 18 years of age**
16 **or older, would constitute a crime.**

17 **SECTION 2. Section 3 of this 2009 Act is added to and made a part of ORS chapter 250.**

18 **SECTION 3. (1) If a state measure may affect the racial and ethnic composition of the**
19 **criminal offender population, the Oregon Criminal Justice Commission shall prepare a racial**
20 **and ethnic impact statement described in ORS 137.656. The statement shall be printed in the**
21 **voters' pamphlet and on the ballot. The statement shall be impartial, simple and under-**
22 **standable.**

23 **(2) If the Oregon Criminal Justice Commission has prepared a racial and ethnic impact**
24 **statement for a state measure, not later than the 99th day before a special election held on**
25 **the date of a primary election or any general election at which the state measure is to be**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 submitted to the people, the commission shall file the statement with the Secretary of State.
2 The commission may begin preparation of the statement on the date that the petition is ac-
3 cepted for verification of signatures under ORS 250.105 or the date that a measure referred
4 by the Legislative Assembly is filed with the Secretary of State, whichever is applicable.

5 (3) Not later than the 95th day before the election, the Secretary of State shall hold a
6 hearing in Salem upon reasonable statewide notice to receive suggested changes to the
7 statement or to receive other information. At the hearing any person may submit suggested
8 changes or other information orally or in writing. Written suggestions and any other in-
9 formation also may be submitted at any time before the hearing.

10 (4) The Oregon Criminal Justice Commission shall consider suggestions and any other
11 information submitted under subsection (3) of this section, and may file a revised statement
12 with the Secretary of State not later than the 90th day before the election. The Secretary
13 of State shall certify a final statement not later than the 90th day before the election at
14 which the measure is to be voted upon. All statements prepared under this section shall be
15 made available to the public.

16 (5) A failure to prepare, file or certify a statement does not prevent inclusion of the
17 measure in the voters' pamphlet or placement of the measure on the ballot.

18 (6) If the statement is not delivered to the county clerk by the 61st day before the
19 election, the county clerk may proceed with the printing of ballots. The county clerk is not
20 required to reprint ballots to include the statement or to provide supplemental information
21 that includes the statement.

22 (7)(a) Any person alleging that the statement was prepared, filed or certified in violation
23 of the procedures described in this section may petition the Supreme Court seeking that the
24 required procedures be followed and stating the reasons the statement does not satisfy the
25 required procedures. A petition is not allowed concerning the contents of the statement or
26 whether a statement should be prepared.

27 (b) If the petition is filed not later than the 85th day before the election at which the
28 measure is to be voted upon, the court shall review the procedures under which the state-
29 ment was prepared, filed and certified, hear arguments and determine whether the proce-
30 dures described in this section were satisfied. The review by the Supreme Court shall be
31 conducted expeditiously to ensure the orderly and timely conduct of the election at which the
32 measure is to be submitted to the electors.

33 (c) If the court determines that the procedures described in this section were not satis-
34 fied, the court shall order that a second statement be prepared, filed and certified as pro-
35 vided in this section except:

36 (A) The Oregon Criminal Justice Commission shall prepare and file with the Secretary
37 of State a statement not later than two days following the decision of the court;

38 (B) A hearing shall be held within two days after the statement is filed; and

39 (C) A statement shall be certified not later than seven days after the decision of the
40 court. The procedures under which the second statement is filed and certified may not be
41 appealed.

42 (8) As used in this section, "criminal offender population" means all persons who are
43 convicted of a crime or adjudicated for an act that, if committed by a person 18 years of age
44 or older, would constitute a crime.

45 **SECTION 4.** In establishing rules applicable to parole or post-prison supervision, the

1 **State Board of Parole and Post-Prison Supervision shall, consistent with the process de-**
2 **scribed in ORS 137.656 (5), prepare and consider a racial and ethnic impact statement de-**
3 **scribing the effect of the rules on:**

4 **(1) The racial and ethnic composition of persons on parole or post-prison supervision; and**

5 **(2) Victims of crime who are members of racial and ethnic groups for which data are**
6 **available.**

7 **SECTION 5.** ORS 137.656 is amended to read:

8 137.656. (1) The purpose of the Oregon Criminal Justice Commission is to improve the effec-
9 tiveness and efficiency of state and local criminal justice systems by providing a centralized and
10 impartial forum for statewide policy development and planning.

11 (2) The primary duty of the commission is to develop and maintain a state criminal justice policy
12 and comprehensive, long-range plan for a coordinated state criminal justice system that encompasses
13 public safety, offender accountability, crime reduction and prevention and offender treatment and
14 rehabilitation. The plan must include, but need not be limited to, recommendations regarding:

15 (a) Capacity, utilization and type of state and local prison and jail facilities;

16 (b) Implementation of community corrections programs;

17 (c) Alternatives to the use of prison and jail facilities;

18 (d) Appropriate use of existing facilities and programs;

19 (e) Whether additional or different facilities and programs are necessary;

20 (f) Methods of assessing the effectiveness of juvenile and adult correctional programs, devices
21 and sanctions in reducing future criminal conduct by juvenile and adult offenders;

22 (g) Methods of reducing the risk of future criminal conduct; and

23 (h) The effective utilization of local public safety coordinating councils.

24 (3) Other duties of the commission are:

25 (a) To conduct joint studies by agreement with other state agencies, boards or commissions on
26 any matter within the jurisdiction of the commission.

27 (b) To provide Oregon criminal justice analytical and statistical information to federal agencies
28 and serve as a clearinghouse and information center for the collection, preparation, analysis and
29 dissemination of information on state and local sentencing practices.

30 (c) To provide technical assistance and support to local public safety coordinating councils.

31 (d) To receive grant applications to start or expand drug court programs as defined in ORS
32 3.450, to make rules to govern the grant process and to award grant funds according to the rules.

33 (4) The commission shall establish by rule the information that must be submitted under ORS
34 137.010 (9) and the methods for submitting the information. A rule adopted under this subsection
35 must be approved by the Chief Justice of the Supreme Court before it takes effect.

36 **(5)(a) The commission shall develop a standardized protocol for the preparation of racial**
37 **and ethnic impact statements.**

38 **(b) A racial and ethnic impact statement shall include the following:**

39 **(A) An estimate of how proposed legislation would change the racial or ethnic profile of**
40 **the state's criminal offender population for racial and ethnic groups for which data are**
41 **available.**

42 **(B) An estimate of the effect the proposed legislation will have in preventing crime**
43 **against members of racial and ethnic groups for which data are available.**

44 **(C) A statement of the methodologies and assumptions used in preparing the estimates.**

45 **(c) The commission shall prepare and submit a racial and ethnic impact statement:**

1 **(A) To a legislative committee, prior to the hearing on the legislation, upon receipt of a**
2 **committee’s request for a statement; and**

3 **(B) In accordance with section 3 of this 2009 Act.**

4 **(d) As used in this subsection, “criminal offender population” means all persons who are**
5 **convicted of a crime or adjudicated for an act that, if committed by a person 18 years of age**
6 **or older, would constitute a crime.**

7 **SECTION 6.** ORS 251.185 is amended to read:

8 251.185. (1) The Secretary of State shall have printed in the voters’ pamphlet for a general
9 election or any special election a copy of the title and text of each state measure to be submitted
10 to the people at the election for which the pamphlet was prepared. Each measure shall be printed
11 in the pamphlet with:

12 (a) The number and ballot title of the measure;

13 (b) The financial estimates and any statement prepared for the measure under ORS 250.125;

14 **(c) The racial and ethnic impact statement described in ORS 137.656, if one is prepared;**

15 [(c)] **(d)** The explanatory statement prepared for the measure; and

16 [(d)] **(e)** Arguments relating to the measure and filed with the Secretary of State.

17 (2) A county measure or measure of a metropolitan service district organized under ORS chapter
18 268, and ballot title, explanatory statement and arguments relating to the measure, filed by the
19 county or metropolitan service district under ORS 251.285 shall be included in the voters’ pamphlet
20 described in subsection (1) of this section if required under ORS 251.067.

21 **SECTION 7.** (1) **Section 1 of this 2009 Act applies to legislative hearings conducted on or**
22 **after the effective date of this 2009 Act.**

23 **(2) Section 3 of this 2009 Act and the amendments to ORS 251.185 by section 6 of this 2009**
24 **Act apply to elections held after the first Tuesday after the first Monday in November 2010.**

25 **(3) Section 4 of this 2009 Act applies to rules adopted on or after the effective date of this**
26 **2009 Act.**

27

Senate Bill 463

Sponsored by Senator SHIELDS; Senator WINTERS

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires Oregon Criminal Justice Commission to create, upon request of member of Legislative Assembly, racial and ethnic impact statement for proposed legislation or state measure. Requires that statement pertaining to state measure be printed in voters' pamphlet.

Requires state agencies awarding grants to include racial and ethnic impact statement in grant application.

A BILL FOR AN ACT

1
2 Relating to racial and ethnic impact statements; creating new provisions; and amending ORS 137.656
3 and 251.185.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. (1) As used in this section:**

6 (a) **"Criminal offender population" means all persons who are convicted of a crime or**
7 **adjudicated for an act that, if committed by an adult, would constitute a crime.**

8 (b) **"Recipients of human services" means all persons who are found to be within the ju-**
9 **risdiction of the juvenile court under ORS 419B.100 or who receive child welfare services**
10 **described in ORS 418.005.**

11 (2) **At the request of a member of the Legislative Assembly, the Oregon Criminal Justice**
12 **Commission shall prepare a racial and ethnic impact statement that describes the effects of**
13 **proposed legislation on the racial and ethnic composition of:**

14 (a) **The criminal offender population; or**

15 (b) **Recipients of human services.**

16 (3) **A racial and ethnic impact statement must be impartial, simple and understandable**
17 **and must include, for racial and ethnic groups for which data are available, the following:**

18 (a) **An estimate of how the proposed legislation would change the racial and ethnic**
19 **composition of the criminal offender population or recipients of human services;**

20 (b) **A statement of the methodologies and assumptions used in preparing the estimate;**
21 **and**

22 (c) **If the racial and ethnic impact statement addresses the effect of proposed legislation**
23 **on the criminal offender population, an estimate of the racial and ethnic composition of the**
24 **crime victims who may be affected by the proposed legislation.**

25 (4) **The commission shall adopt rules to carry out the provisions of this section.**

26 **SECTION 2. Section 3 of this 2013 Act is added to and made a part of ORS chapter 250.**

27 **SECTION 3. (1) At the request of a member of the Legislative Assembly, the Oregon**
28 **Criminal Justice Commission shall prepare a racial and ethnic impact statement that de-**
29 **scribes the effects of a state measure on the racial and ethnic composition of:**

30 (a) **The criminal offender population, as defined in section 1 of this 2013 Act; or**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (b) Recipients of human services, as defined in section 1 of this 2013 Act.

2 (2) The statement must be impartial, simple and understandable and must include the
3 information described in section 1 (3) of this 2013 Act.

4 (3) If the commission has prepared a racial and ethnic impact statement for a state
5 measure, not later than the 99th day before a special election held on the date of a primary
6 election or any general election at which the state measure is to be submitted to the people,
7 the commission shall file the statement with the Secretary of State.

8 (4) Not later than the 95th day before the election, the Secretary of State shall hold a
9 hearing in Salem upon reasonable statewide notice to receive suggestions for changes to the
10 statement or to receive other information. At the hearing, any person may submit suggested
11 changes or other information orally or in writing. Written suggestions and any other infor-
12 mation also may be submitted at any time before the hearing.

13 (5) The commission shall consider suggestions and any other information submitted un-
14 der subsection (4) of this section and may file a revised statement with the Secretary of
15 State not later than the 90th day before the election at which the measure is to be voted
16 upon.

17 (6) The Secretary of State shall certify the statement not later than the 90th day before
18 the election at which the measure is to be voted upon.

19 (7) All statements prepared under this section shall be made available to the public.

20 (8) A failure to prepare, file or certify a statement does not prevent inclusion of the
21 measure in the voters' pamphlet.

22 **SECTION 4.** (1) A state agency that awards grants shall require that each grant appli-
23 cation include a racial and ethnic impact statement that must contain the following infor-
24 mation:

25 (a) Any disproportionate or unique impact of proposed policies or programs on minority
26 persons in this state;

27 (b) A rationale for the existence of policies or programs having a disproportionate or
28 unique impact on minority persons in this state; and

29 (c) Evidence of consultation with representatives of minority persons in cases in which
30 a proposed policy or program has a disproportionate or unique impact on minority persons
31 in this state.

32 (2) The Oregon Department of Administrative Services shall create and distribute a racial
33 and ethnic impact statement form for state agencies and shall ensure that the statement is
34 included in applications for grants awarded by state agencies.

35 (3) The racial and ethnic impact statement shall be used for informational purposes.

36 (4) As used in this section:

37 (a) "Minority persons" includes individuals who are women, persons with disabilities,
38 African-Americans, Hispanics, Asians or Pacific Islanders, American Indians and Alaskan
39 Natives.

40 (b) "State agency" means the executive department as defined in ORS 174.112.

41 **SECTION 5.** ORS 251.185 is amended to read:

42 251.185. (1) The Secretary of State shall have printed in the voters' pamphlet for a general
43 election or any special election a copy of the title and text of each state measure to be submitted
44 to the people at the election for which the pamphlet was prepared. The pamphlet must include the
45 procedures for filing a complaint under ORS 260.345. Each measure shall be printed in the pamphlet

1 with:

- 2 (a) The number and ballot title of the measure;
- 3 (b) The financial estimates and any statement prepared for the measure under ORS 250.125;
- 4 (c) The explanatory statement prepared for the measure;
- 5 (d) Arguments relating to the measure and filed with the Secretary of State;
- 6 (e) **Any racial and ethnic impact statement prepared for the measure under section 3 of**

7 **this 2013 Act;** and

8 [(e)] (f) Any statement submitted for the measure by a citizen panel under ORS 250.141.

9 (2) A county measure or measure of a metropolitan service district organized under ORS chapter
10 268, and ballot title, explanatory statement and arguments relating to the measure, filed by the
11 county or metropolitan service district under ORS 251.285 shall be included in the voters' pamphlet
12 described in subsection (1) of this section if required under ORS 251.067.

13 **SECTION 6.** ORS 137.656 is amended to read:

14 137.656. (1) The purpose of the Oregon Criminal Justice Commission is to improve the effec-
15 tiveness and efficiency of state and local criminal justice systems by providing a centralized and
16 impartial forum for statewide policy development and planning.

17 (2) The primary duty of the commission is to develop and maintain a state criminal justice policy
18 and comprehensive, long-range plan for a coordinated state criminal justice system that encompasses
19 public safety, offender accountability, crime reduction and prevention and offender treatment and
20 rehabilitation. The plan must include, but need not be limited to, recommendations regarding:

- 21 (a) Capacity, utilization and type of state and local prison and jail facilities;
- 22 (b) Implementation of community corrections programs;
- 23 (c) Alternatives to the use of prison and jail facilities;
- 24 (d) Appropriate use of existing facilities and programs;
- 25 (e) Whether additional or different facilities and programs are necessary;
- 26 (f) Methods of assessing the effectiveness of juvenile and adult correctional programs, devices
27 and sanctions in reducing future criminal conduct by juvenile and adult offenders;
- 28 (g) Methods of reducing the risk of future criminal conduct; and
- 29 (h) The effective utilization of local public safety coordinating councils.

30 (3) Other duties of the commission are:

31 (a) To conduct joint studies by agreement with other state agencies, boards or commissions on
32 any matter within the jurisdiction of the commission.

33 (b) To provide Oregon criminal justice analytical and statistical information to federal agencies
34 and serve as a clearinghouse and information center for the collection, preparation, analysis and
35 dissemination of information on state and local sentencing practices.

36 (c) To provide technical assistance and support to local public safety coordinating councils.

37 (d) To receive grant applications to start or expand drug court programs as defined in ORS
38 3.450, to make rules to govern the grant process and to award grant funds according to the rules.

39 (e) **To prepare the racial and ethnic impact statements described in sections 1 and 3 of**
40 **this 2013 Act.**

41 (4) The commission shall establish by rule the information that must be submitted under ORS
42 137.010 (9) and the methods for submitting the information. A rule adopted under this subsection
43 must be approved by the Chief Justice of the Supreme Court before it takes effect.

44 (5) The commission may:

- 45 (a) Apply for and receive gifts and grants from any public or private source.

1 (b) Award grants from funds appropriated by the Legislative Assembly to the commission or
2 from funds otherwise available from any other source, for the purpose of carrying out the duties of
3 the commission.

4 (c) Adopt rules to carry out the provisions of this subsection.

5 **SECTION 7. Section 3 of this 2013 Act and the amendments to ORS 251.185 by section 5**
6 **of this 2013 Act apply to elections held after the first Tuesday after the first Monday in No-**
7 **vember 2014.**

8

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

As Engrossed: S3/28/13

A Bill

SENATE BILL 1093

5 By: Senator Elliott
6 By: Representatives H. Wilkins, Love
7

For An Act To Be Entitled

9 AN ACT TO REQUIRE THE PREPARATION OF A RACIAL IMPACT
10 STATEMENT FOR CERTAIN BILLS FILED WITH THE SENATE AND
11 HOUSE OF REPRESENTATIVES; AND FOR OTHER PURPOSES.
12
13

Subtitle

15 TO REQUIRE THE PREPARATION OF A RACIAL
16 IMPACT STATEMENT FOR CERTAIN BILLS FILED
17 WITH THE SENATE AND HOUSE OF
18 REPRESENTATIVES.
19
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. Arkansas Code Title 10, Chapter 2, Subchapter 1 is amended
24 to add an additional section to read as follows:

25 10-2-132. Racial impact statement.

26 (a)(1) A racial impact statement shall be prepared as provided in this
27 section for any bill filed in the Senate or House of Representatives that
28 will:

29 (A) Create a new offense;

30 (B) Significantly change an existing offense;

31 (C) Change the penalty for an existing offense; or

32 (D) Change existing sentencing, parole, or probation
33 procedures.

34 (2) A racial impact statement shall be prepared and filed with
35 the chair of the committee to which the bill is referred before the bill is
36 heard in the committee during a regular, fiscal, or special session of the



1 General Assembly.

2 (3) If a bill requiring a racial impact statement is amended, a
3 revised racial impact statement shall be prepared for the bill.

4 (b)(1)(A) Except as provided in subdivision (b)(1)(B) of this section,
5 the Office of Economic and Tax Policy, with the assistance of the Department
6 of Criminal Justice at the University of Arkansas at Little Rock, shall
7 prepare the racial impact statement required by this section.

8 (B) The Office of Economic and Tax Policy, with the
9 assistance of the Arkansas Coalition for Juvenile Justice and the Department
10 of Criminal Justice at the University of Arkansas at Little Rock, shall
11 prepare a racial impact statement for a bill under subdivision (a)(1) of this
12 section that has an impact on minors.

13 (2) The racial impact statement shall include without
14 limitation:

15 (A) The estimated number of criminal cases per year that
16 the bill will affect;

17 (B) The impact of the bill on a minority as defined in §
18 1-2-503;

19 (C) The impact of the bill upon correctional facilities
20 and services; and

21 (D) Other matters deemed relevant to the bill at issue.

22 (c)(1)(A) If a racial impact statement indicates a disparate impact on
23 a minority as defined in § 1-2-503, the sponsor of the bill shall consider
24 whether the bill may be amended to achieve its purpose with a lessened impact
25 on minorities.

26 (B) If a bill is amended to lessen its impact on
27 minorities the sponsor of the bill shall identify in writing, in the bill and
28 the racial impact statement, the methodology used to lessen the impact on
29 minorities in the amended proposal.

30 (2) If the sponsor of the bill elects not to amend the bill or
31 if the racial impact statement for an amended bill continues to indicate a
32 disparate impact on a minority, the sponsor of the bill shall:

33 (A) Withdraw the bill; or

34 (B) Identify in writing, in the bill and the racial impact
35 statement, his or her reasoning for proceeding with the bill despite the
36 disparate impact.

